

**Central American Free Trade Agreement (CAFTA):
Proposal for a Successful Implementation in Guatemala**

By

Jose Fernando Spross

THESIS

Submitted to

KDI School of Public Policy and Management

in partial fulfillment of the requirements for the degree of

MASTER OF PUBLIC POLICY

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Approval as of:

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ABSTRACT

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A Free Trade Agreement (FTA) works as a mechanism to facilitate trade and the exchange of goods and services among the signatory nations. With this in mind, Guatemala chose to join the Central American Free Trade Agreement (CAFTA) with the United States of America, but in order to get the most out of the Agreement and to stimulate growth and competitiveness, the country needs to improve the standard of living of the citizens, to build infrastructure, to improve the educative system, and to promote necessary reforms in policy and governance. All these issues necessarily require to be addressed as part of an internal agenda that involves a series of complementary measures that the country needs to adopt. It is the purpose of this thesis to show that if these measures are not taken, it is probable that the expected benefits of the agreement will not be obtained.

Dedicated to my lovely wife Tatiana for all her support, love and care during so many years, and to our fantastic children Alejandro, David and Isabella, who are my inspiration for everything I do.

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INTRODUCTION

A Free Trade Agreement (FTA) works as a mechanism to facilitate trade and the exchange of goods and services among the signatory nations. With this in mind, Guatemala chose to join the Central American Free Trade Agreement (CAFTA) with the United States of America, but in order to get the most out of the Agreement and to stimulate growth and competitiveness, the country needs to improve the standard of living of the citizens, to build infrastructure, to improve the educative system, and to promote necessary reforms in policy and governance. All these issues necessarily require to be addressed as part of an internal agenda that involves a series of complementary measures that the country needs to adopt.

These measures include several institutional aspects, the reduction of unnecessary processes, adoption of new norms and procedures, control and regulation matters, stability of the rule of law, and a smooth functioning of the judicial system, among others.

Guatemala, along with other Central American countries, has recently signed and implemented (July 1, 2006) a FTA with the United States of America, so this topic is one of vital interest for researching. In that sense, the purpose of the thesis is to explore and propose a set of measures –complementary agenda- aimed to: achieve an optimal institutional adaptation to meet the commitments derived from the FTA and take advantage of the opportunities offered by the agreement.

The first chapter of the thesis presents a quick overview of the Guatemalan economic context, the main trade policies adopted and a description of its trade institutional framework. The following chapter gives a short description of the contents of the Central American Free Trade Agreement –CAFTA- after which an analysis of the main rights and obligations (commitments) derived from its implementation is presented. It also identifies the main challenges faced by the implementation process for the Guatemalan authorities.

The third chapter presents two experiences of Latin American countries that have experienced successful implementation processes of Free Trade Agreements. Both Mexico and Chile are two countries that have signed the most FTA's in Latin America, so their experience can be a valuable one for other developing countries such as Guatemala. These experiences show that it is not enough to be prepared for the implementation in terms of institutions and organizations but a set of complementary actions is needed in order to take full advantage of the agreement. This is presented in the fourth chapter, including a proposal for key areas and proposed actions. Lastly, a section with the main conclusions of the analysis is presented.

1. GUATEMALA'S ECONOMIC OVERVIEW AND TRADE POLICIES

1.1. Context

Guatemala is located in the northern part of Central America. The country borders Mexico to the north and west, Belize and the Atlantic Ocean to the east, Honduras and El Salvador to the southeast, and the Pacific Ocean to the southwest. It covers a total area of 108,889 square kilometres divided into 22 departments, the most populous of which is Guatemala City and the southwest coastal districts, which form the department of Guatemala.

With a population of 13.3 million and a GDP per-capita of some US\$ 2,450¹, it is Central America's largest economy. Agriculture plays a major role in Guatemala's economy, with more than 50% of the labor force engaged in farming, forestry and fishing. Its most important export goods are coffee, sugar, bananas, cardamom and "non-traditional" products.

Although traditional agricultural products make up for 35% of Guatemala's export income, "non-traditional" export products, such as vegetables and fruits, consumer goods, and textiles and apparel have expanded and are making an important contribution to the economy.

A series of macroeconomic policies were introduced in Guatemala from 1991 onwards with the aim of creating conditions for sustainable economic growth. This involved a number of structural reforms in the area of trade, finance, public administration, monetary policy and fiscal policy.

¹ World Bank, World Development Indicator's database, April 2006.

Another important fact is that, since the signing of the Peace Accords in December 1996, which ended 36 years of internal armed conflict, one of the main objectives of the authorities has been to restore security and stability, and achieve sustainable economic growth. The Government has undertaken a program of economic liberalization and public sector modernization in order to open the country to the global market and to increase efficiency of public services. In this context, a fundamental goal in recent years has been to reduce the role of the state in the economy and policy measures directed towards the modernization of the public sector were introduced.

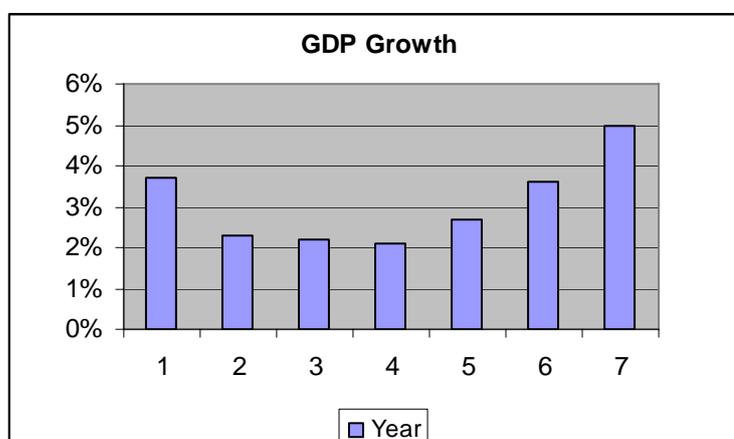
1.2. Economic overview

Guatemala is the largest economy in Central America with a GDP of US\$27 billion representing 36% of the region's combined GDP. The Guatemalan economy has been undergoing a transformation during the last decade. In response to globalization, services and manufacturing have been the highest growth areas. Still, Guatemala's economic activity is primarily based on agriculture (23% of GDP) and domestic trade (24%). However, other activities have gained importance, such as: agribusiness (22%), manufacturing (12%), transportation (11%) and services (6%).²

Despite this transformation, the GDP growth has not been enough to promote economic development. From 2000 to 2006 the GDP growth rate has averaged nearly 3.5%.

² A new methodology based on 2002 data for calculating the GDP is being developed by the Central Bank (as of march 2007), so these figures are likely to change.

Graph 1
Guatemala: GDP Growth, 2000-2006



Source: Central Bank, 2006

Other economic indicators provide insights into the macroeconomic situation of the country. Traditionally, Guatemala's inflation rate has been lower than many other countries in Latin America, fluctuating during the last five years between 5% and 8%. In the last several years the interest rates have been dropping. In 2005, the banking system's average interest rate for credit operations was 13.5% and for savings was 4.5% (see table 1).

Table 1
Guatemala: other economic indicators
2002-2006

Indicator	2002	2003	2004	2005	2006
Inflation rate (%)	6.33	5.85	9.23	8.77	6.5
Currency exchange rate (Quetzales per US\$)	7.81	7.92	7.93	7.68	7.75
Interest rate -loans (%)	16.2	14.1	13.5	13.49	13
Interest rate – savings (%)	6.91	4.52	4.54	4.53	
International monetary reserves (US\$ millions)	2,369.6	2,919.3	3,528.0	3,528.0	3,800.2
GDP growth (%)	2.2	2.1	2.7	3.6	5.0

Source: Guatemala's country profile, based on Central Bank statistics, 2006.

In 1986, about 65% of Guatemala's exports were traditional agricultural products such as coffee, sugar, banana, and cardamom. However, over the past ten years the country's exporting structure has changed considerably. Today, exports of these products represent no more than 40% of the total. Some factors that explain this change are the fall of international prices for coffee and greater diversification and dynamism in non-traditional exports, such as textiles, handcrafts, manufactures and organic products.

Table 2
Guatemala's main exports
(US\$ millions)

PRODUCTS	2003	2004	2005
Apparel	1,228	1,391	1,636
Coffee	261	299	327
Banana	215	209	228
Sugar	227	212	188
Chemical products	148	146	164
Fruits and vegetables	57	124	126
Food products	95	119	125
Cardamom	93	78	73
Total exports	4,162	4,459	5,036

Source: Guatemala's country profile, based on Central Bank statistics, 2005

About 71% of Guatemala's export products are concentrated in three main destinations: United States, Mexico, and the other Central American countries.

The country's main imports are motor vehicles, industrial machinery, manufactured articles, fuels and lubricants, iron and steel. The total of Guatemala's imports is approximately US\$8.6 billion. Nearly 57% of these imports come from five countries: the United States, El Salvador, Mexico, Korea, and Panama.

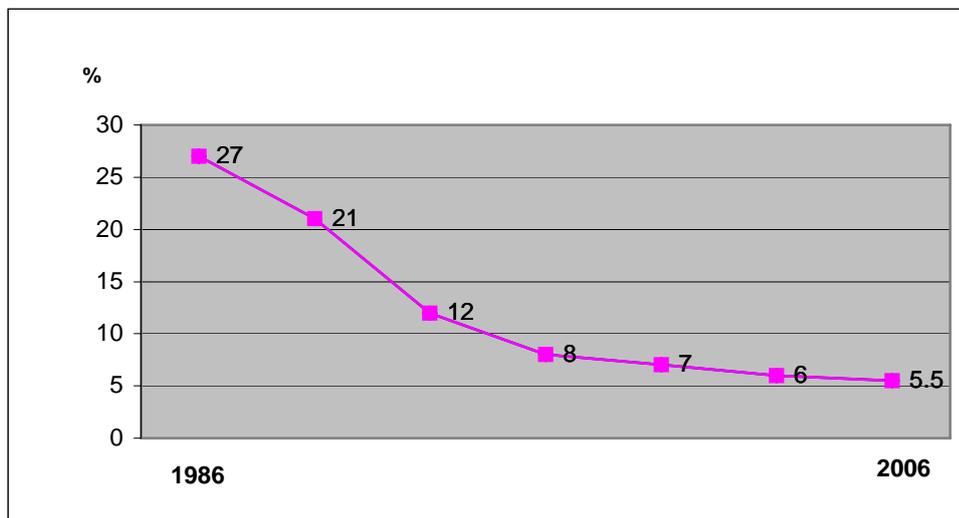
Table 3
Guatemala's main imports
(US\$ millions)

PRODUCTS	2002	2003	2004	2005
Apparel	1,347	1,379	1,500	1,635
Appliances	1,248	1,189	1,263	1,376
Chemical industry products	962	1,037	1,047	1,141
Mineral products	797	959	1,032	1,225
Transportation materials	640	734	792	863
Others	2,664	2,828	2,981	2,575
Total imports	7,658	8,126	8,615	8,815

Source: Guatemala's country profile, based on Central Bank statistics, 2006

Since the late 1980's import duty rates have experienced an important drop, and are expected to drop further as multiple free trade agreements come into force.³ Currently the average import duty rate is 5.5%.

Graph 2
Guatemala: Average import duty rates
1986-2006



Source: own construction based on official data.

³ Presently, Guatemala has reached trade agreements with Mexico, Central American countries, US-DR-CAFTA, Dominican Republic, Taiwan, Colombia and Venezuela, and has currently underway negotiations with Belize, Chile and Canada.

During the decade of 1970's, Guatemala, as many other Latin American countries followed import substitution policies –using trade measures to encourage the domestic production of manufactured goods in place of imports-. These protectionist measures to protect the local industries persisted until 1985, when the use of the “export-oriented” model was initiated. Some of the consequences of the application of the import substitution model were:

- Partial industrialization
- Dependency of foreign direct investments
- High deficits on current account
- Underdevelopment of other sectors of the economy (such as agriculture)
- Increase in unemployment rate
- Deficient allocation of capital due to high levels of protectionism

1.3. Trade policy

The Ministry of Economy, which is the lead ministry for all foreign-trade-related issues, primarily conducts trade policy. It handles all foreign trade matters, negotiates trade agreements and monitors their application, including issues related to Central American integration and tariff policies. It also represents Guatemala in the WTO and has responsibility for related negotiations.

For Guatemala, the Central American Common Market (CACM), which includes El Salvador, Honduras, Nicaragua and Costa Rica, is the focal point of trade and regional integration, and progress has been made in the construction of a customs union. Another important part of trade policy is the Central American Free Trade Agreement (RD-CAFTA) between CACM and the United States. Presently, the treaty is subject to implementation by the countries involved.⁴ Guatemala also participates in the Free Trade Area of the Americas (FTAA), with negotiations supposed to be completed by January 2005.

a. Export Promotion Strategy

In the 1980's, an inward-looking economic development policy and an import substitution model that implied closing the economy to foreign competition characterized Guatemala. However, new measures aimed at breaking away from the previous situation were introduced from 1985 onwards and efforts were directed at bringing about a fully competitive market. This trade strategy aimed at increasing Guatemala's insertion in the world economy, to open new export markets, and to intensify initiatives for greater regional integration.

In 1986 the government declared of national interest the promotion, diversification and growth of the exports and created the National Council for Export Promotion (CONAPEX) in order to execute the Policy of Export Promotion from the highest governmental level, with the aim of advising the President of Guatemala on export policy formulation, making recommendations on promotion and diversification of exports, as well as overseeing policy implementation.

⁴ United States, Guatemala, El Salvador, Honduras, Nicaragua, Costa Rica, and Dominican Republic

During this time, some advances were made by establishing the National Office of International Trade and the one-stop export window; the Law for Promotion of the Export Activities and the Law of Free Economic Zones. Two important decrees were issued in 1989: “Export Promotion and Maquila Law” (Decree 29-89)⁵ and “Free Trade Zones Law” (Decree 65-89) to encourage investment through exemption from import taxes and duties of the inputs used for finished products for export⁶.

These new policies contributed to diversify and increase exports during the 1990s, particularly of non-traditional products. There are close to 900 enterprises operating under the Export Promotion and Maquila Law, mainly in the textile and apparel industry and 13 free trade zones are in operation.

b. External opening

Starting in 1986, a process of international trade openness was also launched, eliminating nearly 95% of non-tariff barriers such as quotas and export permits, and the tariff levels were reduced from an average 60% to 11% in 1997 and to 5% in 2005. This openness has substantially reduced the anti-export bias product of the tariffs to import products, but has affected negatively in the current account deficit of the balance of payments.⁷ However, the country has not taken advantage of this openness to get better market access for the Guatemalan exports.

⁵ Maquila enterprises are exempt from income taxes over a period of ten years.

⁶ The finished product must be exported to countries outside CACM within one year after acceptance of the import documents of the inputs.

⁷ Central Bank, 2005

c. The Central American Common Market

At that time, a major interest for reactivating the Central American Common Market was established. Actions were taken to remove the remaining intra-regional obstacles for trade, the harmonization of the macroeconomic policies, and establishment of common rules of origin, a dispute settlement mechanism and the common external tariff. Also, the development policy was reoriented adopting an “outward looking” model and giving more importance to negotiations with third countries to look for better market access on the external markets for the Central American products.

d. Macroeconomic policies

During the last fifteen years, the macroeconomic policies had the main objective to stabilize the economy of the country and its effects had been determinant in the behavior of the foreign trade. In the beginning of the 1980’s a combination of economic and extra economic factors, as well as the postponement of some decisions in the matter, affected the macroeconomic situation, aggravating the vulnerability of the external sector.

e. International Trade Negotiations

After 1995, a renewed interest for bilateral and multilateral trade agreements was adopted. Guatemala is a member of WTO since July 1995. In the country, the WTO Agreements take precedence over domestic legislation. It has been relatively active in the multilateral trading system, taking part in the extended negotiations on telecommunications services, and making use of the dispute settlement mechanism in a few occasions. Guatemala has also participated actively in the mandated negotiations on services and, as a member of the Cairns Group on agriculture.

Presently, Guatemala has trade agreements with the following countries or regions: United States, Dominican Republic, Mexico, and the Central American countries, Taiwan, Colombia, Venezuela and Belize. Also, there are negotiations under way with the European Union, Chile and Canada.

The preparation and achievement of trade negotiations is in charge of the Ministry of Economy, which has established the National Commission of International Negotiations (composed by private and public sector institutions).

f. Present situation

Nevertheless, the main productive indicators related to international trade show that the policies taken have not been enough and haven't had the necessary direction for the international trade to generate more growth and employments that are required for the development and economic growth of the country.

Diverse factors have affected the referred behavior, being of both macroeconomic and microeconomic nature, such as rushing on trade openness without having the infrastructure and economic conditions to give competitiveness to the national production compared to the main trade partners, low private investments levels, uncertainty on the main economic variables, the existence of an anti-export bias and lack of legal certainty.

To these factors mentioned we could add some others of exogenous nature, mainly the protectionist measures of the main trading partners, especially the United States, the European Union and Mexico. The access of the Guatemalan products to these markets is limited by quotas and conditioned to phytosanitary and environmental regulations that have to be overcome.

Seeing to the future, there are two key elements that have to be addressed in order to get the most out of the international trade. The first refers to the potential that the country has to become developed. There are diverse sectors such as agricultural products, manufacturing sector, apparel and textiles, and non-traditional products (wood products, sea products, handicrafts) that have a lot of potential and expansion possibilities due to the infrastructure and competitiveness that they have showed. The second refers to the fact that there are several products that might be competitive and have high demand on foreign markets but a lot of work has to be done in order to expand the exportable supply.

In that sense, the government of Guatemala proposed in 1997 the National Policy of International Trade with the objective of expanding the participation of the domestic products in the global market and at the same time, get the domestic production to compete with the imported products from other countries through an increase in efficiency and productivity with the main goal of getting better conditions of employment, income and welfare for the population.

This policy is defined as the group of coordinated actions executed by both institutions from the public and private sector, destined to achieve a successful insertion of Guatemala into the globalized economy.

1.4. Policy tools adopted to achieve the goal

Presently, Guatemala's trade policy, outlined in the National Policy of International Trade, is composed by two basic elements:

1. Competitiveness
2. International Trade Negotiations

Under the competitiveness element, the most important actions refer to areas such as:

a) Systemic competitiveness – the objective is to improve the country's ranking of competitiveness index.

b) Attraction of Foreign Direct Investment, in order to position Guatemala as the best platform for export oriented investment in the region. It includes actions as aggressive marketing, creating a positive image, and a strategy focused to previously identified potential sectors (agribusiness, forestry, light manufactures, textiles, services and tourism).

c) Exports development - with the objective of recovering the previous steady growth of exports, with an increase of at least 16% in annual growth. This would be achieved through specific actions such as:

- Economic policies (neutral exchange rate, providing infrastructure in zones with high potential, transport policy, and others)
- Fiscal credit drawback
- Export and market diversification
- Cluster development
- Market intelligence and promotion
- Elimination of market access barriers

d) Insertion of SMEs to the globalization process – trying to link the small and medium enterprises to the global markets.

e) Rural economy reactivation – focusing on the highly potential agri-business sectors and providing the necessary infrastructure to support and develop them.

f) Impulse of clusters – which have been identified as the sectors with more potential in the economy, such as forestry, tourism, apparel and textiles, agribusiness, light manufacturing, and services (call centers and business process outsourcing).

Under the International Trade Negotiations, the main areas of attention are:

a) Access to international markets, which has the objective of increasing the participation of Guatemala in the world markets by:

- Developing strategies and action plans for each of the identified markets
- Developing action plans in order to take advantage of the Free Trade Agreements that have been already implemented

In order to achieve these goals, the government established a National Agenda for International Negotiations. Presently (December 2006), the status of this Agenda is as follows:

- The Central American Free Trade Agreement (CAFTA) has been implemented since July 1, 2006.
- WTO negotiations is in process
- Negotiations with Canada, Chile and Panama were reinitiated, after a period of delay.
- Negotiations under FTAA are temporarily suspended
- A FTA with Colombia has been signed
- Negotiations of new trade agreements with Belize and Taiwan were finished at the end of 2005
- Negotiations with MERCOSUR and Brazil are pending to initiate an evaluation period

b) Consolidate the Central American integration process, with the goal of achieving free trade and mobility of products and people, and finish some pending actions such as:

- Action plan to implement the customs union
- Harmonization of the common external tariff (8%)
- Elimination of non-tariff barriers and facilitation of free trade of goods and services

Having described Guatemala's economic overview and its main international trade policy tools, a brief description of CAFTA and the obligations derived from its implementation will follow.

2. Commitments and challenges faced by the implementation of CAFTA in Guatemala

The signature of CAFTA involves several commitments that are to be enforced by local institutions and that require changes in different laws or the institutions themselves. These commitments are identified according with the different topics covered by the agreement, so first a brief description of the agreement is provided in the following paragraphs.

The CAFTA is a commercial agreement that covers the following topics:

- a) Market access to goods and services
- b) Support norms to investments, protection to intellectual property rights, access to government procurement and respect for the environmental and labor laws.
- c) Legal framework to guarantee transparency and solution to potential conflicts due to the treaty's implementation.

The treaty is divided into 22 chapters and their appendices. The main chapters cover the following topics:

- a) National treatment and market access for goods
- b) Rules of origin and origin procedures
- c) Customs management
- d) Sanitary and phytosanitary measures
- e) Technical barriers to trade
- f) Commercial defense
- g) Government procurement
- h) Investments
- i) Trade between borders
- j) Financial services

- k) Telecommunications
- l) E-commerce
- m) Intellectual property rights
- n) Labor chapter
- o) Environmental chapter
- p) Treaty administration

CAFTA will contribute to expand trade and investments between the United States and Guatemala, through the elimination of import tariffs and other import barriers to diverse products and services. It also provides benefits to consumers, who will enjoy more competitive prices as a result of an increased competition between suppliers.

2.1 Main commitments derived from the implementation of CAFTA

The most important commitments regarding market access relate to the progressive tariff reduction and its enforcement. Since the agreement's coming into force (July 1, 2006), the Foreign Trade Management Division of the Ministry of Economy must carry out this obligatory commitment. Another important aspect refers to the implementation of effective mechanisms for the management of agricultural quotas as well as the implementation of mechanisms to verify the imported garments or textiles' origin.

One important commitment related to trade facilitation is the adoption of international standards for the electronic processing of information and acquiring new technological equipments, as well as the implementation of risk management systems for verification purposes.⁸

Some commitments require the modification of specific laws, such as the procurement law of the government, the judicial branch law, or the commercial code.

Another important set of commitments that involve legal reforms are the ones referred to financial services, such as the provision of investment advisory services and portfolio management allowing collective investments.

Regarding the telecommunications sector there are some commitments such as the ones relating to arbitration procedures in case there is some conflict between the parts involved. It involves changes in the Commerce Code in order to make arbitration procedures mandatory.

The creation of a new e-commerce law is required as part of the commitments of the electronic commerce chapter. It is required by the treaty that Guatemala gets a regulation for e-commerce, including digital firm transactions.

⁸ Tax Administration Agency (SAT) 2006

Other commitments that do not necessarily involve legal changes have to do with the environmental chapter of the agreement, especially those regarding the improvement of national environmental protection standards with the objective of warranting that the laws and politics provide and promote high protection standards, which may include the implementation of certification systems or economic or fiscal incentives.

Finally, there are some institutional commitments that have to be enforced by the authorities. They involve administrative procedures and norms to guarantee transparency and solve potential conflicts derived from the treaty's interpretation. This includes the establishment of necessary measures to typify possible misdemeanors those matters that affect the international trade and investments. Some laws have to be reformed, such as the Penal Code, Civil Code, Code of Commerce, and the Government Procurement Law, among others.

In addition, some restructuring of government offices must be carried out, such as the Tax Administration Agency, related to the collection of taxes and the Ministry of Finance regarding the customs system.

The description of the commitments derived from CAFTA's implementation serves as a general background for the next section, which addresses the challenges faced by Guatemala to run a smooth implementation of the treaty.

2.2 Challenges faced by the implementation of CAFTA

The main challenges consist in accomplishing the institutional strengthening of some key entities that have competence not only in the implementation of the treaty, but also an influence in the facilitation of commerce and the country's competitiveness.

Some departments of the Ministry of Economy from the Vice-ministry for Integration and Foreign Trade need to be strengthened, specifically the Administration Department of Foreign Trade (DACE), which is the entity responsible for the implementation and monitoring of international agreements. Topics such as procedures and United States' Legislation regarding rules of origin, commercial protection and the development of mechanisms to facilitate and promote the use of arbitration and other alternative methods for dispute settlement to solve private commercial disputes. Regarding the commercial protection and dispute settlement topics, certain specific areas of strengthening were identified⁹:

- Strengthening of the Unit for Unfair Practices of the Ministry of Economy
- Training regarding the United States legislation in topics of trade protection, through seminars, internships, technical documentation, etc.
- Strengthening the area of claims in conflict solving, including claim pursuit, monitoring through private sector Chambers and Associations.
- Technical Assistance to improve statistics, in order to handle and determine anti-dumping procedures, safeguards, and compensatory measures.
- Training in alternative dispute settlement mechanisms to solve commercial disputes, among public sector officials as well as private sector representatives.
- Institutional strengthening of the Administrative Support of Special Groups Office in dispute settlement (Currently Secretarial National Section.)
- Technical Assistance to establish the competent investigative authority.

⁹ Ministry of Economy, Guatemala, 2005

Regarding the Agreement's administration, certain necessary actions have been identified, starting with the implementation of institutional mechanisms foreseen in this treaty. One of them is the creation of regional instances where the seven CAFTA countries are represented. Additionally, national instances that allow the interaction among different institutions regarding their areas must be created to implement the Agreement. These are the Technical Coordination Instances, the Commissions and Committees, and the Working Groups.¹⁰

Regarding the systematization of tasks for DACE, the following actions are necessary to strengthen its capability to accomplish the implementation¹¹:

- 1) Internal restructuring based on objective criteria and legal support.
- 2) Creation of data bases that allow the prompt access to information for the implementation of CAFTA, regarding commitments and specific requirements for imports.
- 3) Clear and precise delimitation of duties according to the Ministry's of Economy Internal Regulations (Decree 182-2000) to avoid problems resulting from the lack of competence.
- 4) Strengthening the coordination with other entities responsible for the implementation of the Agreement.
- 5) Implementing the consulting instances with the public and private sectors, at a political level (through CONAPEX or a similar entity) and in the technical instance, through the Committees and the national work groups.

¹⁰ Ministry of Economy, Trade Capacity Building Strategy, 2005

¹¹ Ministry of Economy, CAFTA Implementation Strategy, 2005

- 6) Implementing changes to the internal legislation (laws and regulations) to facilitate the implementation of the mechanisms established at CAFTA.
- 7) Implementation of Information Systems for the Administration of Foreign Trade, as a tool for decision making, which must include statistics related to:
 - a) Balance of trade: imports and exports by product, country, volume and value.
 - b) Potentially exportable products to the United States market according to analyses and import statistics as well as information about the productive sectors.
 - c) Products at risk or threatened, by sudden changes on the imports and exports behavior.
- 8) Strengthening of the jurisdictional branch capabilities in the application of the commercial regulations at the appeal instances.
- 9) Elaboration of guides and manuals about the application mechanisms of the commercial regulations.
- 10) Technical assistance for the Committees and Work Groups that will identify the laws that are needed to be implemented and then elaborate the instance of laws or regulation projects to be submitted to the approval of the competent branch.

Within MINECO's institutional structure, the strengthening of the Department of Commercial Services and Investment, the Department of Promotion of Competition and the Department of Export Promotion, must be considered, because of the need to develop modern and expedite skills to promote competition and consumer's protection, required by the implementation of the Agreement.

Another entity, subscribed to MINECO that must be strengthened is the Intellectual Property Registry, because of the importance of this chapter subscribed in the Agreement. Several foreseen important needs to be covered:

- 1) Training, specialization courses and information exchange among the offices of intellectual property and other regional institutions.
- 2) Technical personnel training on the issues of intellectual property as well as the protection of sound trademarks or smell trademarks, and the specialization of high rank officials.
- 3) Institutional strengthening for the modernization of electronic and technological transfer systems, and for the creation of the Department of technology information and exchange.
- 4) Supporting law reforms, which include changes in some laws and the adaptation or incorporation to the legislation of different international treaties.
- 5) Supporting programs of public awareness and information about the use of intellectual property as an instrument of investigation and innovation, as well as respect and fulfillment of intellectual property rights.
- 6) Technical assistance and training of customs officials so that they can detect anomalies regarding merchandise in matters of intellectual property and the destruction of the illegal merchandise, according to the law.

Another important topic is to complete the customs modernization, so that we can count with the institutional ability capable of responding to the needs resulting from the increase of commerce and investment flow due to CAFTA and to accomplish the expedition of the export, import and migratory procedures, aiming for professional customs that facilitate commerce instead of obstructing it. Within this, the continuous improvement of the one-stop window for exports (VUPE) and the Export Approval Electronic Service (SEADEx) is included, even though, currently the acceleration of the process to obtain an export license and related documents has been accomplished, there is still a need to provide full automatization processes including links with the official agencies and private entities involved. Other areas that need to be strengthened include origin verification unit, which constitutes a very important part of the administration of the commercial agreement.

The assistance of the Superintendence of Tax Administration in the following issues is required, as well:

- 1) Implementing mechanisms to give preferential treatment to co-produced merchandise.
- 2) Strengthening control and capabilities to react towards disloyal commerce practices derived from dispositions related to exemptions, delay o return of customs tariffs, or export subsidies that might have a negative effect.
- 3) Implementing mechanisms of custom cooperation in commercial matters related to textiles and clothing.
- 4) Publication of all measures that apply regarding the import or export of merchandise, including media such as internet.

- 5) Automate and adopt international regulations for electronic information processing.
- 6) Establishing simplified custom procedures to dispatch merchandise.
- 7) Technical assistance to implement risk administration systems in verification activities.
- 8) Implementing a project to accomplish commercial information exchange with the other custom authorities to prevent and investigate illegal activities such as fraud and smuggling.
- 9) Strengthening the performance of custom officials, through the development of a continuous training plan.
- 10) Investigation and information searching regarding measures (law or practice) that have been implemented in the United States and can constitute an obstacle for local exports.

The institutional strengthening of the Ministry of Agriculture –MAGA- has been made evident in different areas, specially to accomplish the implementation of obligations in sanitary and phytosanitary matters, through the Rules and Regulation Unit, which is a division that might need to strengthen through technical cooperation, specially in the following aspects¹²:

- 1) Implementing regional sanitary and phytosanitary standards, as well as requirements and procedures regarding sanitation.
- 2) Implementing an information system for sanitary and phytosanitary matters, to facilitate the commerce of plants, animals and other products.

¹² Ministry of Agriculture, matrix for CAFTA implementation.

- 3) Technical assistance related with food innocuousness, animal and vegetable health. Training is needed for risk evaluation, index elaboration for technical investigations, plague background and regional animal diseases.
- 4) Supporting the access to sources and technological information, such as specialized data bases, to fulfill the requirements and standards of key markets such as the United States.
- 5) Assistance and technical training for research programs and infrastructure projects, information exchange for investigation techniques, and mainly regarding biotechnology and phytosanitary improvement.

Other public entities that need to be strengthened, in infrastructure as well as in human and financial resources, include the Food Regulation Departments and Medicine Regulation and Control Units of the Health Ministry, to address the matters related to processed food and intellectual property regarding medicines; the National Quality System subscribed to MINECO regarding technical competition of national laboratories, accreditation of international inspectors, information centers about quality regulations, and others.

Regarding the departments of the Ministries related to the implementation of the labor regulations, strengthening is needed for the Ministry of Labor, whose objectives in the Agreement are directed towards the observance of the national legislation. The Ministry identified the following areas to strengthen its capability to implement the labor matters of the Agreement¹³:

¹³ Health Ministry, matrix for CAFTA implementation, 2005.

- 1) Technical assistance for the units involved in the implementation of the Agreement, such as the Department of Planning and Cooperation, Department of International Relations, Labor Inspection, Social Prevention and Public Relations.
- 2) Institutional Strengthening through training (seminars, internships, etc.) to modernize and update in topics such as personnel training, labor regulations and labor hygiene regulations.
- 3) Strengthening of the social dialogue through studies, seminars and training.
- 4) Training programs in labor relations for employers and employees.

For the environmental regulations enforcement, the main responsible entity is the Ministry of Environment and Natural Resources, which requires institutional strengthening, especially regarding personnel training in environmental matters and in the implementation of the Agreement of environmental cooperation.

In the Telecommunications issue, the accomplishment of some specific actions is necessary:

- 1) Strengthening of the Telecommunications Superintendence (SIT), specially helping to maintain its functional and financial autonomy.
- 2) Strengthening the actions in order for SIT to be accountable, as the sector's regulatory entity, promoting the transparency in its actions, also requiring an efficient performance from the General Comptroller's Agency.
- 3) Strengthening transparency in the process of awarding frequencies on behalf of the SIT.

In conclusion, it can be said that the institutional capabilities are linked to the specific responsibilities of each institution or Ministry. Beyond the consulting duties of some organizations, there is also a backing role for the producers, businessmen, workers and others, in their adaptation process to the new market and competition conditions.

The previous actions are proposed to be carried out in light of the commitments and challenges that have been identified by the implementation of CAFTA. In this sense, it is interesting to contrast these actions with those taken by other Latin-American countries that already have some experience in the implementation of free trade agreements, such as Mexico and Chile, which is the topic of the next chapter.

3. The experience of Mexico and Chile in the implementation of Free Trade Agreements

Mexico and Chile are two of the countries in Latin America that have signed the most Free Trade Agreements with other nations in the world. Because of this fact, and their successful experience, their case represents a lesson to Guatemala, in its FTA implementation process.

3.1. Mexico's experience

Mexico has signed FTAs with diverse countries including most of Latin American countries, United States and Canada, the European Union and some other European countries such as Switzerland, Iceland, Norway, and Israel.

According to Mexican authorities, the FTA's management is important so that the signatory nations can enforce the commitments previously negotiated, exercise their rights and correctly apply the contents of the agreements signed. In that sense, the Mexican Trade Ministry has instituted several mechanisms that guarantee the correct implementation and administration of Free Trade Agreements.

The most important ones refer to internal mechanisms such as the coordination for the follow-up activities of a FTA. This is in charge of a coordinator, who not only has a global view of the topics, but also is clear about the state of the commitments before, during and after de coming into force of the agreements.

This task has the support of specialized lawyers that interpret the dispositions of the FTA's and look after the enforcement and congruency between the national legislation and the obligations contained in the treaties. It is also supported by technical experts that act as communication channels between the government and the private sector.

Another important mechanism is the official implementation matrix, which includes relevant data regarding the main commitments and rights of the parties involved, before, during and after the coming into force of a FTA. These data include the nature of the commitment, the expected enforcement date, the name of the responsible official and comments or observations. All these information must be updated constantly by the responsible officials.

The third mechanism is the Action Plan for priority matters, which classifies the most important matters that must be addressed. This plan seeks to gain attention from to the national authorities about the commitments derived from the FTA's, prevent the adoption of measures that might be contradictory with the agreements, and notify if this happens.

Other important mechanisms include institutional coordination among the different governmental agencies; and several promotion and cooperation activities.

One distinctive aspect of the Mexican experience is that they have three separate FTA implementation and administration structure, depending on the geographical region. They have one for the North American Free Trade Agreement –NAFTA-, one for the FTA's with European nations and one for the agreements with the Latin American countries. Another characteristic is that they form work groups for specific topics. They include committees of the most conflictive topics like market access, sanitary and phytosanitary measures, standardizing measures, service trade and investments (trade across borders, professional services, transportation, telecommunications, temporary flow of business people and financial services), and government procurement.

Finally, a relevant tool that is used in Mexico for the administration of FTA's are the statistics and information systems, because they are efficient indicators of the commercial flows of the country. Maintaining a good information system is fundamental to both the official negotiators –who periodically need updated and confident data- and the civil society and productive agents of the country.

This system includes data related to international trade statistics and data related to the tariffs regarding imports and exports and the tariff reduction programs related to each Free Trade Agreement.

Institutional changes to implement FTAs

Mexico undertook significant institutional changes to address the challenges and opportunities opened by economic reforms and trade agreements. One major concern

was how to create a more business-friendly environment and to promote the operation of market forces.

In this sense, as part of NAFTA obligations on competition policy, countries “shall adopt or maintain measures to proscribe anti-competitive business conduct and take appropriate action with respect thereto, recognizing that such measures will enhance the fulfillment of the objectives of this Agreement” (Article 1501). Mexico approved an antitrust law in December 1992 that became effective in June 1993. This law incorporated all the necessary elements to prevent anti-competitive practices by private operators and even state-owned companies, and is a very important legislation that complemented the economic reforms undertaken since mid 80s. Over the years, the Federal Competition Commission responsible for the administration of the law has overcome the cultural resistance to these important institutions, and today it is considered a respectable entity.

In 2000, a new independent commission was created: the Federal Commission for Regulatory Improvement. This Commission is the successor of the Economic Deregulation Unit created at the end of the 1980s at the old Ministry of Trade. The Law mandates all Mexican Federal entities to submit for review any regulation that they are planning to enact and, among other things, to present a regulatory assessment of the measures. The Commission sends back the proposal with its approval or presents all its negative comments to the draft. All the exchanges of opinions between the Commission and the submitting agency are public and the comments are taken into account by the President’s Legal Advisor, who must approve the final proposal before publication.

These two Commissions have improved significantly the regulatory environment for business, transparency and quality of state intervention in the Mexican economy.

Another institutional requirement in FTAs is the transparency tools, which constitute a very significant obligation. They provide a minimum standard for trade regulation, reduce transaction costs and enhance public participation in public policy formulation, adoption and application.

3.2. Chile's experience

Chile has signed FTA's with diverse countries such as Mexico, Canada, United States, Central American Countries, European Union, South Korea, New Zealand, and Singapore. In total, they have signed 19 agreements that include 48 countries, achieving preferential market access to a market of more than 1,200 million people. To take good advantage of all these treaties a good implementation strategy is required. For the government of Chile this strategy involves three main areas:

- a) Implementation of the agreement's commitments in the current legal and administrative framework.
- b) Administration of the treaties institutionalism.
- c) Taking advantage of the commercial opportunities as a result of the agreements.

For Chile, there are several factors that have contributed to the smooth process of implementing FTA's, at least for the first two areas mentioned above:

- Political governance
- Openness of its economy
- Sound economic institutions
- The consolidation of existing judicial norms
- Consensus regarding the economic policies between the government and the different political, social and economic actors.

The trade negotiations require a tight coordination process between the different governmental agencies with a clear leadership defined. On the other hand, the consultation process with the civil society is fundamental to guide and give legitimacy to the process. In the different stages that lead to a FTA, Chile's government conducts a consultation process among different sectors of the population (businessmen, NGO's, academic institutions, social organizations, labor unions) to get a clear idea of the costs and benefits of the free trade agreements.¹⁴

This consultation process is guided by the Foreign Relations Ministry of Chile and its Department of International Economic Relations (DIER).

Also, an information process is developed through courses and seminars on trade policy, sending information to the interested public and asking for follow-up comments.

¹⁴ Sanabria Stenger, Christopher, 2005, "*Experiencias Hemisfericas en la Administracion de los Tratados de Libre Comercio*"

Outside the borders of the country, the most important activities are developed through Chile's trade promotion agency –PROCHILE-, whose mission is to facilitate the internationalization of the Chilean economy. Specifically, PROCHILE is in charge of giving information to the interested importers and exporters and easing the process of consultation to the interested in gaining market access from and to Chile.

There are two main activities that the government develops before the implementation of a FTA:

- a) The development of informative materials that describe the contents of the FTA, the expected negotiation results and the possible impacts of the agreement.
- b) The revision of the commitments acquired, both from the legislative and the administrative point of view.

During the implementation stage, the government has to ratify the treaty and publish the Implementation Law of the FTA.

The DIER is also in charge of the administration of the FTA's, whose experience has showed that the correct use of the agreements' institutional mechanisms is fundamental to solve any commercial conflict that may arise.

Finally, the information stage of a FTA in Chile focuses on the political parties, the Congress, the regional and local governments, the NGO's, the businesses, the labor unions, and information through diverse sources such as publications and internet.

Institutional changes to implement FTAs

When bilateral negotiations started, Chile had a relatively open and stable trade regime, tariff rates were 15%, non-tariff measures were almost non-existent and the role of the state in the economy was reduced. Nevertheless, there were certain areas where Chile had to introduce legislation. In the early 90s, intellectual property was a high priority in the U.S. trade agenda. In 1991, Chile was the first Latin American country to enact a patent law. The environmental legislation was out of date and dispersed in different laws; finally, there were no mandatory environmental assessment for investors. The new environmental law addressing all urgent matters entered into force in March 1994. The labor code was reviewed to improve workers' rights, but this latter aspect was much more a domestic political issue aimed at strengthening labour movement.

The FTA implementation experiences of Mexico and Chile showed that the commercial opening offers new economic opportunities, but it also showed that this is not enough for development, unless significant reforms are implemented.

4. Identification and proposal of reform for key areas to take advantage of CAFTA

As Guatemala learned from the implementation experiences of Mexico and Chile, some structural reforms are required, regarding the improvement of education, access to infrastructure, innovation and technological policies, institutional strengthening and introduction of compensatory measures for the vulnerable sectors. Also important is the institutional environment within which economic actors operate, including the protection of property rights, the quality of the judicial system, and the reining in of corruption.

This stage (taking advantage of CAFTA) is regarded as one of transition towards free trade. It is intended to accomplish the necessary actions to get advantage of the opportunities brought by the Agreement and to face the challenges derived from it. In this context, the following strategic actions are required¹⁵ in order to take the most advantages from the implementation of the agreement:

- a) Development and promotion of exports with emphasis in the small and medium enterprises.
 - b) Rural Development and Agriculture Restructuring.
 - c) Competition Promotion through the improvement of the Business Environment and Investment Attraction.
-
- a) **Export development and promotion with emphasis in small and medium enterprises (SMEs)**

¹⁵ According to the Ministry of Economy of Guatemala

One of the main challenges is the improvement of exporting conditions, which is a key element for the sustainable economic growth. The objective of this component is to promote and encourage the development of the country's exports; and to support the development of small and medium enterprises, through projects to improve productivity and competition, creating suitable conditions to successfully export and compete in the international market.

It is required to support mainly SME's in the development of their business capabilities, help with the process of legalizing them, assist businessmen to find the adequate productive chain (seek their participation in the productive or export chain) and then help them develop a market analysis to examine the feasibility of exporting or not. It is also imperative to seek different forms of association, which should be the fundamental strategy so that SMEs can compete, taking into account their small production levels and access to technology. Productive schemes based on outsourcing and alliances with big companies must be developed.

b) Rural development and agricultural restructuring

The second most important challenge in this stage is the rural development and restructuring of the agricultural sector because of its relative importance in the country's economy. This importance is manifested both in the economic sector and in the social one. According to the Central Bank figures, the contribution to the country's economy brought by agriculture has decreased in recent years, but it is still close to 25% as a contribution to GDP. Regarding employment, it is estimated that the agricultural sector employs almost 40% of the economically active population. According to the 2002 national population census and to the 2004 livestock and agricultural census, there are approximately 822,000 agricultural producers in the country.

The implementation of CAFTA increases the risks for people depending on agricultural activities and it is urgent to look for a new solution to modernize their productive structure. This forces the identification of a new rural reality that provides basic education and health services, sanitary infrastructure, energy services, communication systems, which should be considered in a Rural Development Policy.

Meanwhile, there are certain actions in the agricultural sector that are needed to face the challenges and the opportunity exploitation of CAFTA. The agricultural diversification is one of the most important policy areas, for which the Ministry of Agriculture –MAGA- proposed the initiative of “Diversification and Productive Restructuring Program”, which constitutes a viable alternative oriented to consolidate an increase in exportable supply, through the improvement of infrastructure and the quality, sanitary and phytosanitary standards of high competitive level. This initiative has five main components with their respective actions:

1. Determining the exportable supply

It will be based on the market and its regulations, on unsatisfied demand, as well as in technical and business capabilities for production. It includes the following specific initiatives

- a) Implementation of information systems and market intelligence analysis to back up the competitive capability of agricultural and agribusiness companies.
- b) Promotion and diffusion of CAFTA
- c) Promotion of Exports

2. Enforcement of regulations

This information will have to be accessible, developing the institutional and productive sectors capability to enforce the market's regulations and requirements for the selected products. It includes the following actions:

- a) Institutional strengthening for the national inspection of fresh and processed products systems
- b) Strengthening the national laboratory's technical capabilities

3. Infrastructure development

Acquire the required infrastructure to carry out the following activities:

- a) Production and spreading of vegetable certified materials for establishing commercial plantations.
- b) Establishing quality assurance systems at a production and process unit level.
- c) Recollection centers and its equipment
- d) Construction of treatment facilities for fresh products with quarantine restrictions.

4. Investment viability

The investment will require the approval of all intermediary financial institutions and the private sector, in order to obtain resources from different financial ways that permit the later integration to the agricultural production chain or cluster.

5. Training and technical assistance

Strengthening the personnel's technical ability in order to accomplish the following activities: agricultural production, product processing and transformation, sanitary and phytosanitary standards, presentation and wrapping of products, and the agribusiness environment study, including the one on environmental impact.

c) Improvement of the business environment

Finally, the third challenge is represented by the improvement of the country's competitiveness and the business and investment attraction environment. The global economy has been transformed by the fall of international barriers to the flow of goods, services and capital, which has made governments more sensitive to the need to create a friendly business climate. To improve the conditions of competitiveness and business activity, a strong compromise is needed, including the one regarding the rule of law, efficient regulatory and judicial systems, fighting corruption, and a strong compromise towards the competitiveness process.

This includes actions in areas such as:

- 1) Macroeconomic stability - In the surrounding of the global economic environment, it is of great importance to have policies directed to keep the macro economy stable through the fiscal and tax reform, improving the collection levels and mechanisms, as well as efficient spending, through assigning focalized resources in the development of priority areas.
- 2) Improvement of productive infrastructure such as ports, highways, airports, energy infrastructure, transportation and telecommunications.

- 3) Actions in institutional matters that affect business performance and make them less competitive, such as facilitating procedures related to the creation of new business, immigration procedures, visas and working permits, procedures for the authorization of environmental impact studies, customs procedures and import and export processes; having a legal and regulatory frame that encourages productive investment relevant to property rights and strict contract enforcement.

It is also of main importance to improve the judicial system through a greater and more efficient amount of courts and the technological and administrative modernization; as well as with the improvement of some components of the legal mercantile framework of the country, which needs to be reformed to satisfy modern standards and avoid important obstacles for business accomplishment and international trade. Among them we can find competitive policies and laws and processes of corporate governance and business insolvency. It is of special importance for the country, as well, the actions that are carried out to fight the lack of security (personal and legal) that is manifested in different ways, such as lack of security on the highways, generalized corruption, smuggling, and the weakening of legal systems, each one having an effect on commercial relations.

4) Human resources formation

The availability of human resources is a critical element for business competitiveness; this is why reforms to the vocational education systems and training are fundamental, which implies not only the abundance of workers, but also the availability workers with enough education and technological knowledge.

Guatemalan education and human resource training should take into account the requirements demanded by the globalization process, commercial relations and the needed skills and abilities to generate competitiveness.

It is needed to carry out the vocational education reform through the Ministry of Education, analyzing the curricula and making necessary modifications, so that topics of competitiveness, foreign trade, technology, English language, and information systems domain, are introduced. It must also introduce quality concepts to different educational levels: elementary, high school, college and technical training institutes.

It is important to highlight that a training effort must be reoriented in businesses, towards programs related to the quality concept, which should be part of a strategic policy plan that includes quality principles in all education levels and sectors of society, so that business managers, employees, and citizens are formed to a national quality culture. Also, decentralization in providing training services should be implemented, in order to increase their coverage.

5) Quality, innovation and technological development

In Guatemala, deficiencies related to low levels of investment in technology exist, to a weak technological policy, to low level of ISO quality certification norms, and to low levels of quality and technology awareness. All of these factors make it more difficult for business to try penetrating into international markets.

The government has carried out some advances in matters of technological policies, through the National Council of Science and Technology –CONCYT-. Nevertheless, strengthening such framework, by defining clear technology and innovation policies, is needed, with the support of all the productive sectors.

The impact CAFTA might have on each of the participant countries will depend, at the end, on the capability of exploiting the opportunities, and the responsibility, with which all the sectors face the challenges that may arise.

5. Conclusions

- a) Free Trade Agreements are tools that promote economic growth and provide opportunities, but they don't offer an immediate solution to structural problems suffered by developing countries. An internal (or complementary) agenda must be carried out if the FTAs are to be taken advantage of.

- b) The strict enforcement and follow-up of the rights and obligations (commitments) contained in the CAFTA will ultimately result in the improvement of the living standards of the population, the creation and growth of quality jobs, and the consolidation of trade relations between the countries involved.

- c) A continuous training program for national officials responsible for the implementation and administration of the FTAs should be a priority. This can be achieved through national mechanisms or international seminars and workshops that should be available to the most quantity of officials possible. International funding, such as the Trade Capacity Building initiative are available for this purpose.

- d) An efficient communication and coordination network among the different administrative agencies at the national level and the application of transparency principles at the international level will permit the prevention of conflicts between the parties involved. It would also permit a solution before having to activate the dispute resolution mechanisms available. An example of the failure to provide this mechanism can be found in the recent demand by the International Railroad Company –IRC-, which demanded the Guatemalan State under the CAFTA provisions, alleging breach of contract by the Government.
- e) The inclusion of specific work groups or committees facilitates the enforcement of the content of the diverse chapters of the agreement and promotes faster decision-making processes among experts. These groups constitute a forum where different sectors present their concerns and propose solutions when specific problems arise between the parties.

f) It is necessary to go through a modification process of the administrative and legal systems in the country with the objective of adequately enforcing the dispositions contained in the treaty. Specific changes to laws are required to fulfill the commitments derived from CAFTA to Guatemala. One aspect that requires the most changes or revisions is the one referred to Intellectual Property Rights. This chapter requires revisions to the Judicial System Law, Industrial Property Law and the Seeds Law. Some changes are needed to reform the Commerce Code, Civil Code, and Penal Code. Also, the ratification of some international treaties such as the Budapest Treaty and the Brands Treaty are needed. Finally, the Customs Regulations and the Customs Procedures' Manual are to be revised in order to comply with the requirements contained in CAFTA.

Another issue that demands a significant amount of reforms and revisions is the environmental one. In that sense, a review of the Mining Law, the Protected Areas Law, and the Environmental Protection Law is required. In addition, some legislation regarding the water issue is required because of the lack of a general law regulating this resource. In practice, a general review of the environmental regulations is needed to comply with the dispositions contained in CAFTA.

Electronic Commerce is another issue that requires a specific legislation, as well as some reforms to the Notary Code and the Civil Code. This issue is getting more importance as more population has the opportunity to access electronic tools and the public institutions implement internet-based applications for its internal processes. One example of this is the Commercial Registry Office, which is in charge of the procedures to open and register new businesses, is implementing internet-based applications but the electronic firm, contained in the Electronic Commerce Law is still pending.

Other issues that require some revisions are the Government Procurement, (Procurement Law), Market Access for goods (Incentive and Drawback Law), Financial Services (Insurance Law), and Telecommunications (Telecommunications General Law).

In general, the modifications to regulations and laws are extensive. Some of these modifications can be made by dispositions of the Executive Branch, which is easier than when the Congress has to intervene. In these cases, when the ruling party has a dominant position in Congress, these changes can be made relatively easy, but when it is not the case, as in Guatemala, a long negotiation and consensus process has to be carried out.

- g) It is difficult to separate the institutional changes not required by CAFTA, from those necessary for its implementation, because frequently they are closely related.

- h) The FTA implementation experiences of Mexico and Chile constitute a lesson for Guatemala, because they showed that the commercial opening offers new economic opportunities, but it also showed that this is not enough for development, unless significant reforms are implemented.

- i) Finally, the most important actions of what should be done to get the most out of CAFTA include diverse measures such as maintaining a macroeconomic stability, having policies directed to keep the macro economy stable through the fiscal and tax reform; improvement of productive infrastructure such as ports, highways, airports, energy infrastructure, transportation and telecommunications; facilitating procedures related to the creation of new business, immigration procedures, visas and working permits, procedures for the authorization of environmental impact studies, customs procedures and import and export processes; having a legal and regulatory framework that encourages productive investment; training of the labor force, in order to have workers with sufficient education and technological knowledge; defining clear technology and innovation policies, is needed, with the support of all the productive sectors.

Bibliography

- _____. 2005, *"The World Bank and the DR - Central America Free Trade Agreement (DR-CAFTA)"*, World Bank
- _____. 2004, Iniciativa Mesoamericana de Comercio, Integración y Desarrollo (CID), *"Propuesta Ciudadana de Transformaciones post-CAFTA en Centro America"*, Guatemala
- _____. 2004, *"NAFTA in Mexico: Lessons for a Central American Free Trade Agreement"*, in Fair Trade or Free Trade? Understanding CAFTA, http://www.wola.org/economic/brief_cafta_nafta_lessons.pdf
- Asociacion de Exportadores de Guatemala (AGEXPORT), www.export.com.gt, Guatemala.
- Centro de Investigaciones Economicas Nacionales (CIEN), 2003, *"En Busca de Una Agenda de Comercio Exterior"*, Guatemala.
- Harrison, Glenn W., Thomas F. Rutherford, and David G. Tarr, 2001, *"Chile's Regional Arrangements and the Free Trade Agreement of the Americas: The Importance of Market Access,"* World Bank Policy Research Working Paper No. 2634 (Washington, DC: World Bank).
- Hilaire, Alvin and Yang, Yongzheng, 2003, *"The United States and the New Regionalism/Bilateralism"*, IMF Working Paper, Policy Development and Review Department, Washington.
- Jaramillo, Carlos Felipe, 2004, *"What do we know about the effects of CAFTA?"*, - World Bank, Washington D.C.
- Lederman, Daniel, Maloney, William and Servén, Luis, 2003, *"Lecciones del NAFTA y otros Acuerdos de Libre Comercio para América Latina"*, Banco Mundial,
- Marques, Jose, 2005, *"A Partial Equilibrium Estimate of the CAFTA's Welfare Impact"*, World Bank, Washington. <http://wbln0018.worldbank.org/lac/lacinfoclient.nsf>
- Mason, Andrew D., 2005, *"Policy Approaches to Managing the Economic Transition: Ensuring that the Poor Can Benefit from DR-CAFTA"*, World Bank. <http://wbln0018.worldbank.org/lac/lacinfoclient.nsf>
- Morley, Samuel, 2005, *Trade Liberalization and the Treatment of Foreign Investment under CAFTA: An Analysis of the Agreement with special reference to smallholders in Central America*, Instituto Internacional de Investigación de Políticas de Alimentos (IFPRI), Washington, D.C.

Portner, Claus C., 2003, “*Expected Impacts of CAFTA in Guatemala*”, Department of Economics University of Washington

Programa Nacional de Competitividad (PRONACOM) 2005, “*Informe Institucional 2005*”, www.mineco.gob.gt/mineco/despacho/pronacom2005.pdf, Guatemala.

Salazar-Xirinachs, José M., and Jaime Granados, 2003, “*The United States-Central America Free Trade Agreement: Opportunities and Challenges*”, paper prepared for the Institute for International Economics Conference on “Free Trade Agreements and U.S. Trade Policy,” May 7–8, Washington, D.C.

Sanabria Stenger, Christopher, 2005, “*Experiencias Hemisfericas en la Administracion de los Tratados de Libre Comercio*”, Secretaria de Economia de Mexico, Organizacion de Estados Americanos –OEA-, Mexico.

Schiff, Maurice, 2002, “*Chile’s Trade Policy: An Assessment*”, Central Bank of Chile, Working Paper No. 151, April (Santiago).

Websites consulted:

www.mineco.gob.gt

www.ustr.gov

www.wto.org

www.usaid.gov

www.worldbank.org

www.eclac.cl