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Under cover of darkness in the dead of night, the legislature of El Salvador debated, and at 11:03 on the morning of Dec. 18 approved, the Central American Free Trade Agreement (CAFTA). It thereby became the first country to do so. Passage came after 19 straight hours of battle on the floor of the Asamblea Legislativa (AL). Pro-CAFTA forces, led by the ruling Alianza Republicana Nacional (ARENA) and including the Partido de Conciliacion Nacional (PCN), the Partido Democrata Cristiano (PDC), and one lone member of the opposition Faribundo Marti para la Liberacion Nacional (FMLN), chalked up 49 of a possible 84 votes to ratify the trade agreement with the US. Only a simple majority of 43 was needed.

The FMLN has 30 seats in the unicameral body. Victory for the pro-CAFTA forces came just hours after a takeover of the chamber by protesting members of the Movimiento Popular de Resistencia 12 de Octubre (MPR-12). After the MPR-12 protesters left the chamber, the exhausted FMLN-minus-one traded insults with its sleepless adversaries in a raucous debate, but to no avail. The left was not entirely bereft, however.

Prior to the CAFTA vote, the FMLN had narrowly prevailed in a vote on a bond issue needed by the government to finance the 2005 national budget. Having sent the US$541.8 million bond issue back to committee, the FMLN had a hostage; party leader Schafik Handal announced that, if the treaty passed, there would be no bonds and no budget. T

he mixed outcome of the night's work muted President Antonio Saca's jubilation at being first to ratify CAFTA. "We are seeing that there is a great number of businesspeople who want to come to the country, and now that they have seen that El Salvador is the first country to ratify the free-trade agreement, this is going to increase," he said. But he was also constrained to say about the budget stalemate, "I'm going to keep working to reach an agreement, and I have asked the treasury minister and the Governability Commission to continue conversing, because when dialogue breaks down, you have to keep talking."

As the year drew to a close, Saca was still talking, but the FMLN appeared not to be listening. Facing a new year without a budget, the president announced on Dec. 27, "The officials of the present government are ready to meet as often as they [the opposition] want, including during vacation. The treasury minister and the Governability Commission, and all the ministers who have something to do with the subject, including the president, are ready." The opposition did not respond. They had covered their bases.

In order that the government not close down altogether in 2005, the Asamblea Nacional approved the issuance of Letras del Tesoro (letes) to raise funds to pay public salaries. The letes, amounting

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to short-term borrowing, are vastly more expensive than the bonds, prompting Saca to exhort, "I hope the FMLN understands that their caprice is generating short-term indebtedness that has to be paid almost immediately. It is costing us dearly." He followed up with a threat that the people would remember this, and the FMLN would pay the price in the 2006 elections. But the FMLN was still not listening. The government tried calling the two FMLN members of the AL Treasury Committee, but the deputies did not answer their cell phones.

Could be a long wait

To make Saca's CAFTA victory even more potentially pyrrhic, events in neighboring Guatemala and in the US bring into question whether CAFTA will come into being in the near future. Days before El Salvador's ratification, two US congressional representatives sent a letter urging Central American lawmakers to hold off on ratifying the agreement.

The letter, dated Dec. 14 and signed by Rep. Raul Grijalva (D-AZ) and Rep. Hilda Solis (D-CA), said the Congress is unlikely to approve CAFTA. Both representatives oppose CAFTA because of its lack of adequate labor and environmental protections. "We respectfully suggest to you that, when considering a trade agreement with such profound implications for all the nations of Central America, you should not be swayed by the argument that you must vote to ratify because the US Congress is certain to do the same," the letter said. "This argument is not only based on false premises, but could create a 'rush to judgment' that all the CAFTA nations would come to regret."

Nor are Democrats the only ones in the Congress to question the premises. Rep. Donald Manzullo (R-IL), chair of the House Small Business Committee, commented, "This is going to be an extremely difficult vote with the huge, monstrous trade deficit." The deficit stood at US$500.5 billion through October 2004, surpassing the record US$496.5 billion for all of 2003.

USTR threatens one, threatens all

On Dec. 28, the Office of the US Trade Representative (USTR) cast further doubt on the treaty's future in the Congress, but not because of environmental or labor concerns. The USTR was miffed by Guatemala's decision to allow the manufacture of generic drugs and agrochemicals, undercutting US pharmaceutical firms. Guatemala reformed its Ley de Propiedad Intelectual to eliminate a CAFTA-negotiated feature whereby CAFTA countries grant the US producers five- and ten-year extensions to the established 20-year period of patent protection (see NotiCen, 2004-08-26).

Luis Velasquez, president of the Asociacion de Industriales Farmaceuticos Guatemaltecos, emphasized that the reforms do not annul the 20-year protections, only the add-ons. The reform permits Guatemalan firms to begin manufacturing their own versions after the established period, at substantially reduced cost to the consumer. The USTR responded to the measure with the warning, "In order for us to be able to present the free-trade agreement to the Congress of the United States for approval, it is necessary that all the participants comply with these arrangements."

A communication from the US Embassy in Guatemala added, "We are very disappointed that Guatemala has taken a measure that does not comply with the obligations acquired under the Free

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Trade Treaty with Central America." USTR Robert Zoellick and his assistant Regina Vargo have reportedly notified the other CAFTA parties that Guatemala's actions will sink the deal for all.

El Salvador, first again, responded to the pressure with a call from Salvadoran Economy Minister Yolanda de Gavidia to her Guatemalan counterpart Marcio Cuevas. Cuevas told Gavidia the matter must await his country's legislators' return from vacation, prompting her to reply, "The problem must be overcome because El Salvador has already ratified the treaty, and it's not fair that one of the countries affect the rest."

Guatemalan Vice Minister of Economy Enrique Lacs spun the situation differently. Speaking before the US Embassy issued its note of disappointment, he said the US did not condition submission of the treaty to Congress on elimination of Guatemala's patent reforms. "There are no threats or conditions," he said. "The United States is worried that our law is going to generate more opposition in the US Congress, adding to what already exists with the sugar and textile producers." He doubted the law would be a blow to the US industry, since Guatemala only imports 1% of its drugs from them. He anticipated that the issue would become clear when regulations that comply with World Trade Organization (WTO) rules are drawn from the new law.

WTO might bite the hand that feeds it

Luis Velasquez said that WTO rules forbid additions to the 20-year patent protection standard. If the US persists, Velasquez said he is certain that when the issue comes before the WTO, most countries will side with Guatemala. The WTO has dealt the US a series of slap-downs on similar issues in recent months. The rebuffs to the US have been sufficiently damaging to US trade pretensions that continued membership in the organization is now in some doubt. Zoellick is required to report to Congress regarding whether the country should stay in the WTO. The Congress can consider withdrawal every five years, and 2005 is one of those years. The Congress will have 90 days after the USTR's report to act.

For some international trade analysts, CAFTA is the acid test for Zoellick, who is looking to step down from his USTR spot and succeed James Wolfensohn at the head of the World Bank. If he fails to deliver CAFTA, his effectiveness in translating negotiation, at which he excels, into law will be in question. He has pointed out in the past that, for US business interests, "these small countries are very big markets." US businesses exported US$15 billion to the CAFTA countries, and a study by the International Trade Commission estimated that those exports would rise by US$2.7 billion under the treaty. Said Myron Brilliant of the US Chamber of Commerce in Washington, "CAFTA is crucial. If we don't pass CAFTA, we send a very negative message to Latin America and the world."

But back in Guatemala, for a growing number of dissenters CAFTA is the negative message. Rigoberta Menchu, Nobel Prize winner (1992) and now in the government as goodwill ambassador for the Peace Accords, called the US attempt to disable her country's law on generics "blackmail." Menchu, who has a stake in the law as owner of a string of low-price drugstores in Guatemala (see NotiCen, 2004-02-19), portrayed the interference as "an example of the power of the transnational pharmaceuticals. If this is the nature" of CAFTA, she said, "that is to say, the defense of business

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interests to the detriment of the population, then the trade pact will generate more poverty in the isthmus."

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