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Dominican Republic Bogged in CAFTA Minutiae, Drugs and Public Contracts at Issue

by Mike Leffert
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The Dominican Republic's entry into the Central America Free Trade Agreement (CAFTA) remains stalled. The country is one of two (with Costa Rica) that has not joined the pact (see other article, this edition). US Ambassador to the Dominican Republic Hans Hertell had said in June that he expected the country to come on-line sometime in 2006, but there has been little movement since.

A major drag on progress has been that the pact could put the local pharmaceutical industry out of business. Another problem was that, in its rush to comply with late-breaking requirements from the US, the government lost control of its own contracting law.

On the pharmaceutical issue, competitive pricing is not the problem, said industry representatives. Laura Castellanos, director of the Asociacion Nacional de Industrias Farmaceuticas (INFADOMI), and Fernando Ferriera of the Asociacion de Representantes y Agentes de Productos Farmaceuticos (ARAPF) agree that drug prices would not rise or fall because imported medicines are not subject to tariffs and have not been since December.

The real problem lies with CAFTA's rules on intellectual property. Under these rules, local products would be subject to demands for data on product effectiveness and other testing procedures necessary for registering a drug. Since the local manufacturers are not in a financial position to provide these data and pay for the extensive testing demanded by the US Food and Drug Administration and other entities, they would be driven from the market, leaving the importers with a virtual monopoly.

Director of Drogas y Farmacias de Salud Publica David Diaz Guzman said it remained unclear what the impact of CAFTA on the local producers would be. Technical Secretary of the Presidency Temistocles Montas was also uncertain about what the text of the agreement says about the problem. "A very delicate situation is being worked on," is all he could manage to explain to the citizenry in a TV appearance. He said in July that a technical mission would be sent to Washington to iron out the uncertainties.

On Aug. 17, a second delegation to Washington was announced by Secretary of Industry and Trade Francisco Javier Garcia. "Practically everything is ready," he told the media. But it really is not quite ready. He went on to explain that, when the process of negotiation on this and some other issues is concluded, modifications to existing laws would still be needed. That entails writing bills and submitting them to the Dominican Congress.

Contracting law got out of hand
The drug problem is not the only holdup on the CAFTA front. The Dominican government is also still working on modifications of the Law on Public Contracting, Goods, Services, and State Projects required by the treaty. The government's legal advisor said the Secretariat of Finances was working on the law to bring it into compliance. "Finances is working on it," he said on Aug. 22, "but I still don't have it finished."

The Office of the US Trade Representative (USTR) had demanded changes to the public-contracting law that would enable US firms to bid on and undertake public works in the Dominican Republic. The Congress had already made substantial changes to the country's laws to accommodate CAFTA but it appeared that the USTR had caused the ground to shift again.

President Leonel Fernandez was rushed to send a bill to the Congress the night of Aug. 19 to meet a constitutional deadline. Fernandez was in the position of amending the government's own legislation. "So, the executive power promulgates it but, at the same time, is going to introduce modifications," explained Fernandez, trying to keep up with CAFTA. Secretary of Finances Vicente Bengoa clarified later that the president had been blindsided in the Congress on the original law. "What the Congress did was create an autonomous entity, decentralized from the central government."

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