



# **BASELINE ASSESSMENT OF DOMINICAN INSTITUTIONAL CAPACITY TO IMPLEMENT CAFTA-DR**

**October 2007**

This report was written by Donaldo Hart, Elka Scheker and Patricia Mejía for Chemonics International Inc. under Contract No. IQC # EEM-I-00-07-00008-00.

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## **DISCLAIMER**

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## ACRONYMS

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ADOZONA	Dominican Free Trade Zone Association
AIRD	Industrial Association of the Dominican Republic
AMCHAM	American Chamber of Commerce
ANJE	National Association of Young Entrepreneurs
BCR	Georgia Business Climate Reform project
CAAC	Environmental Commission of the Academy of Sciences
CAD	Dominican Environmental Consortium
CAFTA-DR	Central America-Dominican Republic-United States Free Trade Agreement
CAFTA-DR-IP	CAFTA-DR Implementation Project
CCPSD	Chamber of Commerce and Production of Santo Domingo
CEI-RD	Center for Exports and Investments
CNC	National Competitiveness Board
CODOPYME	Dominican Confederation of Small and Medium Enterprises
CONEP	National Council of Private Business
CONIAT	Council for Implementation and Administration of Trade Agreements
CPP	Competitiveness and Policy Program
CRT CAFTA-DR	Regional Trade Program
DASA	Despradel & Asociados, S.A.
DGA	Directorate General of Customs
DICOEX	Directorate of Foreign Commerce
DIRECON	General Directorate for International Economic Affairs - Chile
DR	Dominican Republic
EU	European Union
FDI	Foreign Direct Investment
FUSADES	Salvadorian Foundation for Economic and Social Development
GDP	Gross Domestic Product
GODR	Government of the Dominican Republic
GPO	Office of Government Procurement
GTZ	Deutsche Gesellschaft für Technische Zusammenarbeit
IDB	Inter-American Development Bank
INTEC	Technological Institute of Santo Domingo
IPR	Intellectual Property Rights
ISA	Superior Institute of Agriculture
JICA	Japanese International Cooperation Agency
MOU	Memorandum of Understanding
ONAPI	Secretariat of Intellectual Property Rights and Patents
OTCA	Commercial Agricultural Agreements Office
PBMS	Performance-Based Management System

PIU	Project Implementation Unit
PP	Puerto Plata
PRO CONSUMIDOR	Institute for Consumer Protection
PROTLCUEM	Capacity Building Project of the Mexico-European Union Free Trade Agreement
PUCMM	Pontificia Universidad Católica Madre y Maestra
ROO	Rules of Origin
SAF	Strategic Activities Fund
SEA	State Secretariat of Agriculture
SEIC	State Secretariat of Industry and Commerce
SEMARENA	State Secretariat of Environment and Natural Resources
SHE	State Secretariat of Finance
SEREX	State Secretariat of Foreign Affairs
SESPAS	State Secretariat of Health
SET	State Secretariat of Labor
SOFOFA	Federation of Chilean Industry
TRQ	Tariff Rate Quota
UNCITRAL	United Nations Commission on International Trade Law
UNIBE	Ibero-American University
USAID	United States Agency for International Development
USTR	United States Trade Representative
WTO	World Trade Organization

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## Executive Summary

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## Executive Summary

### A. The Assessment

The Institutional Baseline Assessment was among the first activities undertaken in the context of USAID's *CAFTA-DR Implementation Project*. The purpose of the Assessment was to evaluate the capacity of public agencies and private organizations to advance implementation of CAFTA-DR and to enhance the benefits of the Agreement for the Dominican people. In the case of the state institutions, the emphasis lay on their understanding of, and ability to meet, specific obligations under CAFTA-DR; for the private entities, their importance was viewed largely in their means and willingness to expand the measurable benefits the Agreement should confer on business and on society at large. For the USAID Implementation Project, the objective of the Assessment was to provide findings that would contribute to the drafting of a five-year work plan of carefully targeted assistance.

USAID's institutional counterpart for the Assessment was the Directorate of Foreign Trade, known by its acronym, DICOEX. DICOEX provided office and meeting space for the Assessment, and members of its staff participated in the majority of interviews.

The consulting team held 24 interviews, 20 with representatives of governmental or quasi-governmental institutions and four with executive managers of leading private-sector organizations. In addition to DICOEX, the public agencies were as follows:

- CEI-RD – Dominican Center for Exports and Investment.
- CNC – National Competitiveness Council.
- DGA – General Directorate for Customs.
- INDOTEL – Dominican Telecommunications Institute.
- ONAPI – National Office for Industrial Property Rights.
- ONDA – National Office for Copyrights.
- OTCA – Office for Agricultural Trade Agreements.
- PRO CONSUMIDOR - Institute for Consumer Protection
- SEH – State Secretariat of Finance.
- SEIC – State Secretariat of Industry and Commerce.
- SEIC/DIGENOR – General Directorate for Norms and Systems.
- SEMARENA – State Secretariat of Environment and Natural Resources.
- SEREX – State Secretariat of Foreign Affairs.
- SESPAS – State Secretariat of Health and Public Assistance.
- SET – State Secretariat of Labor.

The private-sector associations were:

- ADOZONA – Dominican Association of Free Trade Zones.

- AIRD – Association of Industries of the Dominican Republic.
- AMCHAM – American Chamber of Commerce of the Dominican Republic.
- JAD – Dominican Agribusiness Board.

The criterion for selecting public institutions was that they have a clear responsibility in the implementation of CAFTA-DR; the criteria for selecting the few private organizations were that they were active during negotiations of the trade agreement, that they are representatives of a large sector of the business community, that they possess sufficient resources to carry out programs for enhancing CAFTA-DR benefits, and that they are stable, sustainable entities likely to endure for years to come.<sup>1</sup>

The methodology for conducting the assessments was simple and included documentary review and direct, face-to-face interviews with representatives of the entity under evaluation. The interviews followed flexible but structured formats tailored for government agencies, private organizations, and DICOEX unit coordinators. All interviews took place at the DICOEX offices.

While this exercise has been denominated as a *baseline* assessment, it is in fact an organizational evaluation with very limiting parameters. Rather than gauge an institution's overall structure and resources, this Assessment has focused exclusively on an organization's relationship to the CAFTA-DR trade agreement and its obligations since the Agreement's entry into force. Only in the sense of the organization's present capacity to meet those obligations can it be understood in terms of a baseline. The gap between present and required capacity represents the needs that external assistance may be called upon to help fulfill in any given public institution or private association.

## **B. Findings**

Several overall conclusions are substantiated in the details of the Assessment findings:

- Within each of the governmental institutions there is demonstrable awareness of the institution's responsibilities in CAFTA-DR implementation.
- The private sector organizations involved in the Assessment show keen interest in the success of CAFTA-DR and continue active in communicating with their memberships.
- DICOEX is recognized as the governmental agency with responsibility for coordinating the implementation of the Agreement.
- The Government does not have structured programs for implementation of CAFTA-DR. With very few exceptions—such as in ONAPI or INDOTEL—actions are taken in the absence of clear prioritization or schedule.

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<sup>1</sup> Despite its central importance to CAFTA-DR implementation, the Customs Administration was not included in the Assessment, because the agency is the object of a separate, regional USAID project.

- Communication regarding actions taken in the context of CAFTA-DR, both interagency and within institutions, is generally haphazard, informal, and often undocumented.
- Needs for external assistance vary greatly between the public and private sectors and among institutions. Among private sector entities, external support will be welcomed for seminars and workshops as well as for communications through publications and through the media. Within the public sector, needs for external assistance include staff training, organizational restructuring, technical assistance in ITC, financial support for publications, and studies.

Many needs specific to institutions are detailed in the full text of the report. One area, however, deserves special mention, and that is the CAFTA-DR provisions related to agriculture. Full implementation of the Agreement in the context of importation and exportation of agricultural goods is complex and requires urgent attention and focused external assistance. The department of the Ministry of Agriculture with the burden of implementation responsibilities is the *Oficina de los Tratados Comerciales Agrícolas* – Office of Agricultural Trade Agreements (OTCA). Unfortunately, OTCA has not been endowed with the human, financial, or technical resources to respond adequately to its institutional mission. It must be among the first priorities for external assistance.

### **C. DICOEX – Directorate of Foreign Trade**

A department of the Ministry of Foreign Affairs, DICOEX has been assigned full responsibility for coordinating the implementation of CAFTA-DR as well as other foreign trade agreements. The centrality, scope, and importance of this administrative obligation made the agency a special focus point in the Assessment.

Despite its unequivocal embrace of its mission, DICOEX confronts a number of issues and barriers to accomplish. In the first place, the agency's legal authority to enforce implementation is at once ambiguous and insufficient. Nowhere is this situation clearer than in DICOEX's responsibilities in financial services, including insurance, where its information is scarce and its lines of communication with the Central Bank weak or nonexistent.

DICOEX's organizational structure shows issues of passive or reactive development that may or may not be appropriate to its mission. Although the agency was meant to undergo business process reengineering, this exercise never took place, and its four technical units were simply replications of those from other countries. One of the units, Commercial Information, also replicates a division of the CEI-RD in name and function. DICOEX has no operating manual or written job descriptions.

A third general area of concern involves DICOEX's day-to-day activities, its primary *modus operandi*. Interviews with unit coordinators revealed that they and their staff members spend an inordinate amount of time—up to 60 percent—in responding to queries from the business community, or in some cases from other institutions. Agency

staff considers the public as its client and responsiveness to consultations from the public a responsibility of first-order importance. The result, however, is that DICOEX cannot effectively carry out its primary responsibilities towards implementation while attending to public inquiries—most of which come over the telephone.

Assistance to DICOEX takes first place in the line of priorities for external support. Ensuring the adequacy of its legal authority, rationalizing its organizational structure, and defining its areas of responsibility and intervention are the three major categories for such support. Within any program of support to DICOEX must be the clear identification of outstanding issues in CAFTA-DR implementation—those issues for which no institution has accepted responsibility or for which there is simply no adequate resource for their achievement.

The findings in this Assessment are indicative and the recommendations preliminary. Each finding points toward an area for in-depth examination before any program of assistance is drafted; each recommendation is suggestive at best of an approach to improvement in any designated shortfall of resources.

## **SECTION I**

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### **INTRODUCTION**

## SECTION I

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### INTRODUCTION

This report presents the findings and recommendations of an assessment of the Dominican public institutions and private organizations most directly involved in ensuring the success of the Dominican Republic – Central America – United States Trade Agreement (CAFTA-DR). In the case of governmental institutions, the assessment focused on their capacity to carry forward full implementation of the Agreement; for private organizations it explored their commitment and resources to bring forth robust economic and social benefits for the country.

#### A. Background

In 2003 the Dominican Republic began negotiations on the free trade agreement that became known as CAFTA-DR (the Agreement). It was ratified by the U.S. Congress in July 2005 and by the Dominican Congress in September of that same year. Final certification by U.S. authorities, however, was delayed until March 2007<sup>2</sup>. The definitive text of the Agreement comprises twenty-two chapters, several annexes, and a multitude of provisions and requirements in a timeframe extending from 30 days following entry into force to twenty years from that date.

In the Dominican Republic it is normally the Ministry of Foreign Affairs—SEREX (*la Secretaría de Estado de Relaciones Exteriores*)—that negotiates conventions with other nations, including trade agreements.<sup>3</sup> In the case of CAFTA-DR, however, it was the Secretariat of Industry and Trade—SEIC (*Secretaría de Estado de Industria y Comercio*)—that negotiated the Agreement. Through its Directorate of Foreign Trade—DICOEX (*la Dirección de Comercio Exterior*)—SEIC is in charge of implementation of CAFTA-DR and other agreements. DICOEX was previously a small department that, following ratification of the Agreement, assumed a far greater weight of responsibilities and grew commensurately. For this reason DICOEX was central to the present assessment.

CAFTA-DR was one of the few, and by far the most complex, trade agreements the country had entered into, and negotiations required a steep learning curve of Dominican officials and executives. USAID, along with other U.S. agencies, provided considerable technical assistance during the negotiation period in policy reform, regional competitiveness, and especially in trade capacity building. Through the Competitiveness Initiatives and Policy Project, USAID helped support, or collaborated in some capacity with, most of the entities now involved in implementation of the Agreement—a phase no less demanding of institutional resources than the negotiations period.

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<sup>2</sup> See U.S. Public Law 109-53, section 101 b for final approval and entry into force of the agreement.

<sup>3</sup> SEREX actually negotiates trade agreements through *Comisión Nacional de Negociaciones Comerciales* (CNNC), an inter-ministerial commission headed by the minister of foreign affairs.

The country faces numerous challenges in meeting its obligations under the CAFTA-DR, many of which are highly time-sensitive. These challenges may be technical, political, or operational, so that addressing them effectively requires action planning in the areas of human resources, public relations, and coordination—often all three for any given institution.

The need for fully effective coordination within the public sector has been partially met by investing DICOEX with that responsibility. Although the agency lacks adequate legislative authority and internal capacity to fulfill such a mandate in the short term, it has indicated its readiness, with timely and appropriate assistance, to ensure that implementation of CAFTA-DR does not stall.

In the meantime, under the provisions of the Agreement, the Government's obligations in terms of mandated committees, timeliness of goods clearance, and some aspects of intellectual property rights, health and sanitation, agricultural inspection, and government procurement have fallen behind schedule. No single agency is adequately prepared to monitor compliance, and discrete responsibilities fall to a range of institutions. Complicating further both technical and political aspects of implementation is the absence of a single body to serve as the representative of the private sector to government.

## **B. Purpose and Methodology of the Baseline Assessment**

The overall purpose of this assessment is to document the capacity of public institutions and private organizations to carry forward the implementation of CAFTA-DR. The present report, funded by USAID, provides this documentation.

The assessment will complement DICOEX' National Action Plan and contribute to planning for a larger assistance effort in strengthening DICOEX itself and the other target institutions. It will indicate areas of strengths and weaknesses in institutional capacity; it will permit a more pointed prioritization of activities to be undertaken by DICOEX and its collaborating partners; and it will serve as the first line of reference for a CAFTA-DR implementation monitoring system.

The methodology followed for conducting the assessment included documentary review and 60-90 minute, face-to-face meetings with senior representatives of the target entities. The interviews followed flexible but structured formats designed separately for public institutions and for private organizations.

The selection of target organizations for the assessment was initially provided in an interview agenda developed by DICOEX; it was subsequently refined, in light of the limited timeframe allowed for the exercise, to exclude organizations with very small, or strictly subsidiary, roles in implementation and communications of CAFTA-DR. With a

few exceptions, it is meant to be inclusive of every public institution that has clear and important tasks in reaching compliance with the Agreement.<sup>4</sup>

### **C. Parameters of the Assessment**

The exercise should be understood in terms of its purpose: it is meant to provide practical information to DICOEX and the agency's collaborating partners for scheduling assistance in the context of CAFTA-DR implementation. The individual assessments by intention and necessity are therefore focused only on the relevant questions: Does the institution/organization understand clearly its obligations under the Agreement? Does it possess the technical capacity to meet these obligations? Does it have communications and monitoring strategies? Can it show concrete outputs or results? What kind of external assistance does it need? The strict focus of the interviews left aside many questions and probes that would be relevant to a full-fledged assessment of any organization.

### **D. Structure of Report**

The report comprises four sections and four annexes. Following this introduction, the second section covers the assessments of government and autonomous public institutions, and the third presents the assessments of the selected private organizations. In both instances the assessments gather exclusively around CAFTA-DR issues and responsibilities. Each assessment concludes with a summary of findings and this report's recommendations for external involvement or direct assistance.

The fourth section focuses on DICOEX, the public agency assigned coordinating responsibilities for implementation of the Agreement. Owing to the central importance of the agency, the report covers DICOEX' organization, mandates, actions, and accomplishment more fully than it does for the other entities. This section also discusses actions of importance or urgency for implementation of the Agreement which have not found an institutional locus, or which remain pending without support

Finally, the annexes contain an organization chart for DICOEX, a list of persons consulted, a brief bibliography of documents reviewed and the scope of work for this consultancy.

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<sup>4</sup> The Customs Administration, while of central importance, was not among the institutions examined because it is the object of a separate, regional USAID project. Universities, which have some roles to play, will collectively be the object of future meetings.

## **SECTION II**

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### THE PUBLIC INSTITUTIONS

## SECTION II

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### THE PUBLIC INSTITUTIONS

#### A. SEIC – State Secretariat of Industry and Commerce

##### A1. Unidad de Prácticas Desleales de Comercio (antidumping and countervailing measures)

**A1a. Legal Status and mandate.** The Antidumping and Countervailing measures unit is a department of the Sub-secretary of Foreign Trade of the Secretary of Industry and Commerce (SEIC). It was established as a temporary office to secure the observance of the Antidumping and Countervailing Safeguards Measures Law No. 1-02. With this legal framework, the Dominican Republic adopts as internal law all the WTO dispositions pertaining to the Agreement on Subsidies and Countervailing Measures signed in 1995.

This law creates a *Comisión de Prácticas Desleales de Comercio* as the national authority to carry out the investigations that are required by the law and its regulation; and to determine the application of countervailing, antidumping, and safeguard measures. Nevertheless, the law also states that until the Commission is established, the Secretary of Industry and Commerce will temporarily administrate these procedures; hence the Antidumping and Countervailing Measures Unit.

**A1b. Current Situation.** This unit has one (1) person responsible for receiving complaints from businesses and explaining the procedures and documentation that are to be deposited to start a dumping investigation. Until now, businesses that have approached the unit do not follow up, since it is noticeable that there is a human and material inability to administer the process. The unit states that it can only listen to the complaints from the affected sectors, since the Commission does not exist nor does the structure that establishes how the investigations will be carried out and how sanctions will be imposed.

However there is a temporary commission, appointed by law, to act with the same attributions as the *Comisión*. The temporary Commission presided by SEIC, is also composed of the Ministry of Agriculture (SEA), Dominican Customs Agency (DGA), Ministry of Foreign Affairs (SEREX), Ministry of Finance (Hacienda) and members of the National Private Enterprise Council (CONEP) and the Industrial Association of the Dominican Republic (AIRD).

The people in charge of this unit informed us that there is also a set of regulations (reglamentos) since February 2007, and were revised by the WTO. This comes to prove that it is possible to implement said law if personnel and resources were to be assigned.

It is relevant to highlight that before the CAFTA-DR entered into force, DICOEX was also a 3 persons department within the Sub-secretary of Foreign Trade.

**A1c. Relationship to CAFTA-DR.** Chapter 8 of CAFTA-DR regarding Trade Remedies indicates the procedures to follow, in the event that a safeguard measure and compensation is to be imposed. The national law and the internal procedures must take their queue from CAFTA-DR, including the limits that the Agreement imposes in regards to time and duration of the measure. The Dominican Republic, during the legislative adjustment process, modified the law no. 1-02 to adjust it to what CAFTA-DR established.

The Antidumping and Countervailing Measures Unit indicated that they lack training regarding the new commitments, the procedures to follow, and the mechanisms to handle disputes.

Past experience in trade agreements with Central America worries the Antidumping and Countervailing Measures Unit since it anticipates a greater number of investigations (inquiries) from the private sector, and it does not have the tools to implement the procedures, notices, investigations, evaluations, hearings, and reports as established in annex 8.7 of CAFTA-DR's Chapter 8.

DICOEX has a specialist following up on subjects regarding safeguards and compensatory measures; however the person in charge of the Antidumping and Countervailing Measures Unit did not know of this, which prevented a reduced team of people from actually creating some synergy. It is crucial, for the implementation of the dispositions and procedures contained in Chapter 8, to support proactively the strengthening and adjustment of the Antidumping and Countervailing Measures Unit, while the incorporation of the Commission is defined - which has been standing since January 2002.

**A1d. Actions and support.** Since there is not a department that could really assume the commitments set forth by the Agreement, it is recommended to DICOEX to start working, with full integration of the unit, on the preparation of guidelines and manuals to receive, notify, and implement the procedures and mechanisms established in Chapter 8.

Donors as well could consider the Commission as a potential recipient of technical assistance, targeted study tours, and direct funding for specific activities.

## **A2. DIGENOR – General Directorate for Standards and Quality Systems (Dirección General de Normas y Sistemas de Calidad)**

**A2a. Legal Status and Mandate.** DIGENOR is an office of the Secretary of Industry and Commerce. It was established in 1977 to issue and supervise the compliance of quality norms, though until now it has not been able to fulfill its institutional mandate. The Dominican Republic does not have a quality control system. With serious budgetary constraints, DIGENOR fulfills only its role of issuing norms that are not obligatory, holds inspections upon request and routine verification of the calibration of masses of the expenditures of products and services.

**A2b. Relationship to CAFTA-DR.** DIGENOR pursuant to Law 6-02 is the entity that manages technical barriers to trade. As such, DIGENOR acts as the head of the Committee of Technical Barriers to Trade within the WTO framework and other international agreements.

They understand that their responsibility in the CAFTA-DR framework is to, not only belong to the Technical Barriers to Trade Committee, but also participate in the Trade in Goods Committee and Sanitary and Phytosanitary Measures. Nevertheless, they have not been invited to any meeting nor received training regarding these subjects.

Within the matrix that DICOEX made regarding the different entities involved in the administration of the CAFTA-DR - which contains the different committees to monitor the Agreement's fulfillment – DIGENOR is identified as part of the Sanitary and Phytosanitary Measures Committee, but the CAFTA-DR specifically gives DICOEX the responsibility of monitoring the compliance of Chapter 7.

Notwithstanding this specific designation, the strengthening of DIGENOR is crucial in order to benefit from the Agreement and to give support to DICOEX in the monitoring responsibilities and administration of Chapter 7, which contains also other actions like:

- Deal promptly with matters that one Party proposes in regards to the development, adoption, application or execution of the norms, technical regulations or evaluation procedures for conformity.
- Improve the cooperation in the development and improvement of norms, the technical regulations and conformity evaluation procedures; and design and suggest mechanisms for technical assistance coordinating them with the Trade Capacity Building Committee.
- Facilitate the sector cooperation between government and non-governmental entities that handle conformity evaluations in the territory of two or more Parties.
- Consult about any matter that arises in light of this Chapter. These consultations will be considered as the initial consultations for a dispute settlement procedure.

**A2c. National Action Plan.** DIGENOR participated in the preparation of the National Action Plan; however the registered initiatives do not constitute the institution's priorities. The development proposal of a new legal framework, materialized recently with the presentation of the Law proposal that creates the National Quality Control System, which foresees the creation of a metrology institute and a national entity for accreditations. It also provides with a detailed diagnostic arising from cooperation from the Physikalisch Technische Bundesanstalt (PTB) in Germany.

DIGENOR understands that its main needs are in capacity building, technical trainings through internships, and laboratory evaluations processes, inspections and certification. DIGENOR trusts that the new legal framework will provide it with the necessary tools to carry out its important role.

DIGENOR's present situation cannot be overlooked in a serious effort to take advantage of the CAFTA-DR. DICOEX needs to rely on a technical body for investigations pertaining to norms and quality control processes, and to face the market access difficulties that Dominican products are subject to under the argument that they do not comply with the norms or quality standards.

Currently 160 people work in DIGENOR but only 20% are considered professional or able technicians. In order to counteract their deficiencies they have sought the establishment of international alliances so Dominican businesses can access international certifications and accreditation (Spanish Association for Standardization and Certification (AENOR) from Spain, and Costa Rican Entity for Accreditation (ECA) from Costa Rica). However, there are no procedures to certify products. Without a doubt this constitutes a serious obstacle to take full advantage of the CAFTA-DR since Dominican goods and services have a handicap to access competitive international markets.

The Project must contemplate specific assistance to generate at least some impact programs, such as the one that Assistance Program for Small Dominican Private Businesses (PROEMPRESA) coordinates with the European Union funds, which will certify 18 Dominican exporting companies.

As a starting point, it is recommended to train DIGENOR's technical personnel regarding the Agreements commitments, and the establishment of a procedure, coordinated with DICOEX, to establish the consultation mechanisms that are established in Chapter 7.

Since DIGENOR does not have its own processes, the opportunity is just right to assimilate the common practices with the quality control criteria from the United States.

**A2d. External assistance received.** DIGENOR has received assistance from the CNC/IDB for the preparation of a new institutional and legal framework. It has received the support of international alliances to provide services.

### **A3. PRO CONSUMIDOR (Institute for Consumer Protection)**

**A31. Legal Status and mandate.** The *Instituto de Protección al Consumidor*, also officially designated Pro Consumidor, was created as an autonomous, governmental institute in 2005 by Law 358-05; it was effectively established with a board of directors chaired by the Minister of Commerce and Industry since June 2007. Law 358-05 abrogated the former law regulating price control and represents not just substitute legislation but a full modernization of the Government's position towards commercial activity. Pro Consumidor is still in the process of setting up offices, recruiting staff, and establishing operational norms and will require some months to commence its activities.

Pro Consumidor's mandate is to administer the very legislation that created it, having as its clients all consumers of goods and services. It enjoys considerable authority to

impose sanctions and fines, to demand immediate removal from the marketplace of any product it deems a menace to public welfare, to enforce truth in advertising, and to ensure the accurate labeling, in Spanish, of all products sold to the public.

Since the Institute's mandate is nationwide, it will have offices in each province and representation in most if not all municipalities.

**A3b. Implications for CAFTA-DR.** Pro Consumidor has not been directly involved with either negotiations or the implementation of CAFTA-DR and is unlikely to assume any direct responsibility for the Agreement in the future. Its vigilance over both services and goods does, however, have implications for wholesalers and retailers of imported goods destined for public consumption as well as for individual and corporate providers of services, whether financial, legal, or other. Under CAFTA-DR a broad range of services, whether through cross-border supply or commercial presence, is now allowed, and Pro Consumidor will have the opportunity to maintain vigilance over the integrity of promotion and delivery of the products. In insurance, banking, investment, and legal services the importance of consumer protection is clear.

**A3c. Actions and support.** Pro Consumidor has yet to open its doors and prove its capacity to enforce the law and offer effective services to its beneficiaries. DICOEX should maintain contact with the Institute and monitor its implementation and actions. Donors as well could consider Pro Consumidor as a potential recipient of technical assistance, targeted study tours, and direct funding for specific activities.

## **B. OTCA – Office of Agricultural Trade Agreements (Oficina de Tratados Comerciales Agrícolas).**

**B1. Status and organizational purpose.** The Office for Agricultural Free Trade Agreements (OTCA) was created in October 2005 through the Ministerial Resolution 54-05. It is part of the Vice Ministry of Technical Planning of the State Secretariat of Agriculture (SEA - Secretaría de Estado de Agricultura), although it is physically located in a different building.

Originally, OTCA was created to deal with trade negotiation, agricultural trade surveillance and the evaluation and assessment of Free Trade Agreements on the Agricultural sector. Its current mission is to provide support for the implementation and compliance with the country's obligations of CAFTA-DR in agriculture.

**B2. CAFTA-DR responsibilities.** OTCA is responsible for the administration and implementation of the country obligations under chapter 3 on market access on agricultural commodities. OTCA has the task of managing the Tariff Rate Quotas (TRQs) and Special Safeguards for sensible commodities negotiated under CAFTA-DR. OTCA has the responsibility to allocate quotas based on the premises established on the Annex 3.3 and the General Notes. Additionally there exist some sanitary and phytosanitary obligations the country has to comply with (chapter 6), as well as overseeing some of the Technical obstacles to trade related to agriculture as stated on

chapter 7 of the CAFTA-DR agreement. Similarly, issues related to Intellectual Property Rights on agriculture –mainly to abide by the International Convention for the Protection of New Varieties of Plants - (UPOV Convention 1991), as well as chapter 20 on Dispute Settlement.

OTCA has a unit for trade implementation and administration. This unit has the mandate to prepare the annual calendar for the TRQs, as well as the basic guidelines to be used for contingent allocation among prospective importers. Likewise, OTCA handles the importers data base and works very closely with other government entities directly involved in the implementation of CAFTA-DR. In fact, the ministry of agriculture heads a petit committee (which includes the Ministry of Industry and Commerce and the Custom Office) responsible for the final allocation of TRQs.

Similarly, OTCA needs to coordinate with the Department of Plant Health (sanidad vegetal) to harmonize the country sanitary and phytosanitary legal base and practices, with the rest of CAFTA-DR countries.

**B3. National Action Plan.** So far OTCA is a new office with limited and scarce personnel and without a comprehensive and well defined Action Plan. However the office has been engaged on some activities to comply with the country's DR- CAFTA obligations. Among those:

- Participation on Training activities under the guidance of DICOEX.
- Interaction with other government and private institutions related to the implementation of CAFTA-DR on agricultural matters. There has been a proactive approach to build a communication channel with the different entities and stakeholders and DICOEX.
- Establishment of a communication mechanism to answer some of the questions raised by other public and private institutions on topics related to agricultural trade.

The cadre of professionals working at OTCA possesses basic training on trade issues. However, it is evident the lack of training on specific trade topics, especially on tariff quota allocation and management, impact analysis, and statistics. At the moment only 4 technicians Work on a permanent basis at OTCA. Two of them deal with trade negotiations and the rest on administration and implementation of trade agreements.

A major drawback of this office is the lack of direct and continuous access to imports and exports data on a timely fashion. This in turn, affects the OTCA's ability to monitor and provide surveillance mechanisms to comply with the quota volumes for sensible agricultural commodities.

Similarly, in the case of safeguard provision, there is not readily access to imports data that could be used to trigger the safeguard mechanism and the possibility of dumping practices.

**B4. Coordination with other institutions.** DICOEX has established a linkage with OTCA through its coordinator on market access. Most enquires on agricultural issues are being diverted to OTCA. However, DICOEX is not directly engaged on the implementation and monitoring of the CAFTA-DR agricultural obligation.

Other government institutions interact with OTCA, such as the Custom Office. There have been some meetings to discuss issues related to TRQs compliance. Even when OTCA can get access to the Customs Office data base online, they do not have all the information needed to monitor and evaluate the quota allocation, as well as the use of the TRQs by importers in a timely fashion.

**B5. Specific needs to fulfill CAFTA-DR responsibilities.** A rapid evaluation of OTCA reveals institutional weaknesses. Most of the positions on the organizational chart have not been filled, which shows the lack of capacity to perform some of the tasks derived from CAFTA-DR commitments. In spite of the major responsibilities vested upon OTCA, there is not institutional capacity in term of enough qualified personnel and financial resources. The following are some of the issues that need to be addressed:

- Technical assistance to strengthen the institutional capacity and define the role of the office. That should include the staffing of different technical areas and provision of external assistance to provide in house training.
- Design and implementation of a WEB page to allow the private sector to get access to timely information on CAFTA-DR issues, level of quota allocation; quota holders; and statistics on agricultural trade.
- Training on Rules of Origin.
- Training on Agricultural Safeguards, TRQs. It is important to include DGA personnel on this training.
- Provide a mechanism to direct interaction with the private sector at the national level. This can be accomplished using the regional division of SEA and in partnership with the Dominican Agribusiness Board (JAD).
- Prepare the manual on agricultural safeguards.
- Technical assistance to strengthen the office capacity to prepare impact analysis on sensible commodities and identify initiatives to help those commodities to cope with the new environment provided by CAFTA-DR.
- Design a mechanism to monitor the quota allocation and provide surveillance to agricultural issues in partnership with the Customs Office and DICOEX.
- Establishment of a Unit for the implementation of agricultural safeguards.
- Establishment of a Data Base with information on sanitary and phytosanitary measures on partner countries.

**B6. External assistance received.** OTCA has not received any assistance on trade implementation. They have been exposed only to training offered by DICOEX.

## C. SET - State Secretariat of Labor

**C1. Status and organizational purpose.** The Dominican State Secretariat of Labor (SET) is a cabinet-level, line ministry established in 1930 with multiple responsibilities; since 1961, under Decree 6603, it has assumed exclusively functions related to labor and employment. The overall mission of SET is to administer the laws and regulations related to labor in the country along with the Labor Code of 1992. Among its multiple responsibilities is also ensuring the country's compliance with international labor conventions to which the Dominican Republic is signatory.

**C2. Relationship to CAFTA-DR.** Chapter 16 of the CAFTA-DR Agreement, along with ancillary texts, sets forth the conditions and obligations of member states in relationship to domestic and international labor policies and regulations. There are three firm institutional obligations and one suggested action under Chapter 16. The obligations are:

- The establishment of a multilateral Labor Affairs Council with cabinet-level representation from each member state. (16.4)
- A meeting of the Council must be held within the first year of enactment of the Agreement. (16.4)
- A special unit that will serve as a contact point should be established within the appropriate ministry of each country. (16.4)
- Establishment of a Labor Roster with the names of up to three qualified individuals who will serve as panelists for dispute resolutions. (16.7) This roster was to be complete within six months of the Agreement's entry into force.

A suggested action is the establishment of a consultative committee comprising government, business, and the labor force.

In addition to these commitments, the Agreement includes numerous further obligations in the labor sector.

**C3. Actions undertaken by SET.** SET has been active in CAFTA-DR since the early phases of negotiations. In response to the specific commitments outlined above, the Secretariat has set up and staffed a special office as point of contact, and it has sent a cabinet-level representative to a meeting of the Labor Affairs Council. (The Dominican Republic has also held numerous bilateral meetings with the labor ministries of other parties, including the U.S. Department of Labor.) SET has had a Consultative Committee with cross-sector representation since 1998, and this committee now serves to discuss issues and commitments related to CAFTA-DR. The Committee is the Secretariat's vehicle for communication with the private sector. A special office established for CAFTA-DR—*la Oficina de Seguimiento al CAFTA-DR en los Aspectos Laborales* (*the Office for Monitoring Labor Aspects of CAFTA-DR*)—serves to monitor SET's compliance and progress under the Agreement.

In order to address many of the concerns implicit in the Agreement, especially in matters related to international labor conventions, SET participated, under the auspices of the IDB, in a meeting in 2004 with other member states to produce a white paper in 2005 on several areas of concern within the framework of CAFTA-DR. The paper, which remains a working document for SET, covers nine areas which include some of the subjects of greatest attention in the Dominican Republic, such as child labor regulations and enforcement, gender issues in employment, compliance with international norms and policies, and capacity building.

One commitment that remains unfulfilled and is behind schedule is the naming of candidates for the Labor Roster. Article 16.7 indicates the qualifications of candidates and certain procedures to be followed in the selection process.

**C4. External assistance.** The Secretariat has received assistance in the past from the International Labor Organization (ILO), the Inter-American Development Bank (IDB), the U.S. Department of Labor, and USAID. At present it benefits from two ILO projects and from USAID's Labor Justice Project. The Department of Labor has budgeted \$40 million to be divided among the Dominican Republic and the Central American member states for various projects in the labor arena. STE has determined that it could benefit from capacity building in trade negotiations for the staff in the special office it has established for compliance with CAFTA-DR.

**C5. Actions required.** With a single exception, SET seems to have fulfilled all its commitments under CAFTA-DR and continues to be active through its special office, which is chaired by an undersecretary. The single exception is the selection of individuals for the Labor Roster. In the absence of a coordinating committee beyond DICOEX, it is now imperative that the two agencies come to terms on this minor but mandatory provision of the Agreement.

The decision should reach beyond this single issue and help clarify the *reasons* that justify one or another institution assuming responsibility. While the language in Article 16.7 could be interpreted to suggest that the ministry in charge of labor should not alone conduct this recruitment, it does not suggest that that ministry should recuse itself from the procedures.

DICOEX needs to establish a formal means of communication with SET, and through established meetings the areas of responsibility and priorities must be made clear.

## **D. SEH - State Secretariat of Finance**

**D1. Legal status and mission.** The *Secretaría de Estado de la Hacienda* (SEH), the Dominican Republic's Ministry of Finance, is among the oldest of the country's governmental institutions, established in only months following national independence. In its present state, it was renamed "Hacienda" from the former "Finanzas" and underwent some internal restructuring through Law No. 494-06 of December 2006.

The Secretariat, typically, has jurisdiction over all public finance. Among its many attributions, those which directly concern the present study are under its internal departments for the Customs Administration, for International Affairs and Commercial Treaties, for Fiscal Policy, and—most saliently—the Directorate of Government Procurement (*la Dirección General de Contrataciones Públicas*).

**D2. Relationship to CAFTA-DR.** CAFTA-DR has raised a great many concerns within the Secretariat owing to the risks associated with diminished revenue from the importation of goods from the member states of the Agreement, especially goods originating from the U.S. Accordingly, the Secretariat conducted a number of studies in this area and took certain fiscal measures—none in contravention of the Agreement—to balance the loss from tariff revenues.

Because the Customs Administration operates with institutional autonomy, the SEH's oversight on customs reforms was one of vigilance but not one of direct management.

The single area of greatest concern for the SEH is found in Chapter 9 of CAFTA-DR, which, along with three Annexes, sets forth the provisions and obligations related to government procurement. In response to the conditions set forth in Chapter 9, the Secretariat drafted, and the Government passed, Law No. 340-06 in August 2006, modified subsequently in the same year by Law No. 449-06 regarding concessions (designated suppliers). In 2007 this legislation was again modified in Law No. 490-07, and there have been several decrees between the promulgation of these laws.

Chapter 9 is complex, covering issues of timing, transparency, and technical instructions in the public tendering process, national treatment and local suppliers, and specific matters regarding the award of contract. The SEH's response through national legislation is correspondingly detailed and complex. There are two major outstanding issues at present.

The first of these concerns is the incorporation into the current legislation of earlier Law 322 which requires that foreign-owned firms be associated with Dominican companies for all public procurement. Law No. 322 is not, however, in contravention of CAFTA-DR, as Chapter 9 offers a thirteen-year transition period for reducing the current mandatory 50 percent association requirement to 20 percent of Dominican ownership.

The second, and more urgent, outstanding issue regards Article 9.13 in the CAFTA-DR Agreement, which requires that all signatories adopt measures that disqualify (render "ineligible") from public procurement suppliers shown to be guilty of fraud, bribery, incompetence, and of other specified acts of commission or omission. Each party is to maintain as well a list of ineligible suppliers and to make that list available to other parties upon request. At the present time, the Dominican Republic has either not compiled or not made available in any public fashion such a list.

**D3. External assistance.** The IDB has been the principal donor organization active with the Secretariat.

**D4. Coordination with other institutions.** In addition to its work with the Customs Administration and in coordinating the studies and analyses of its several internal divisions, the SEH consults with every line ministry. It also works with other state institutions. For example, in 2006 it conducted a series of technical studies to assess the fiscal impact of recommendations being made by the CNNC (*Comisión Nacional de Negociaciones Comerciales*). The Secretariat also maintains relations with DICOEX for all matters pertaining to trade agreements.

**D5. Actions to consider.** The SEH has defined a number of its needs, some of which are largely internal, such as the construction of an interactive web site and related software for procurement. Other of its perceived needs is by and large external but directly related to the transparency, openness, and effectiveness of a new public procurement program. They would like to see, for example, support to SMEs to increase their participation in procurement with the Government; training to the traditional suppliers so that they understand the new rules; and training to the judiciary, especially around disputes and other potential controversies.

Donor agencies, possibly through DICOEX, should conduct a more detailed assessment of these needs within the appropriate divisions of the Secretariat.

Given the complexity of the requirements for government procurement under CAFTA-DR, and the equally complex legislative responses, the Secretariat should have some external assistance to ensure that its actions are in compliance. Such an assurance is all the more important in the current absence of Dominican dispute resolution mechanisms.

There should also be an external audit of recent tenders and awards.

The issue of the list of ineligible firms needs resolution and the list must be clearly accompanied by a description of the criteria for their exclusion.

As the Government body with responsibility for monitoring CAFTA-DR implementation and compliance, DICOEX should put in place a program for working with the SEH. At present no such program exists, and it is clear that intercourse between the agencies is irregular.

## **E. SEMARENA - State Secretariat of Environment and Natural Resources**

**E1. Legal status and mission.** The *Secretaría de Estado de Medio Ambiente y Recursos Naturales* (SEMARENA) was created in the year 2000 via Law No. 64-00. Its mission and purpose are implicit in its name: to draft and administer all policies and regulations pertaining to the conservation and protection of the environment and of the natural resource base of the Dominican Republic. SEMARENA emphasizes that its establishment was the result of extensive, public consultations with over three hundred

entities that include government agencies, private sector organizations, political parties, NGOs, bilateral donors, and international organizations.

**E2. Relationship to CAFTA-DR.** Chapter 17 of the CAFTA-DR Agreement sets forth the conditions, provisions, and requirements related to environmental issues. The major articles of this chapter require:

- Enforcement of the member state's environmental law in ways that are clear, transparent, and not in violation of other provisions of the CAFTA-DR Agreement (17.2);
- A legal structure for the enforcement of environmental law, including penalties and sanctions, along with the establishment of clear judicial and administrative proceedings related to enforcement (17.3);
- The establishment of an Environmental Affairs Council comprising cabinet-level representation (17.5);
- The designation of an office within the environment ministry to serve as a contact point for all parties to the Agreement in respect to environmental issues (17.5);
- The creation of a mechanism for receipt of, response to, and dissemination of communications with the public at large on matters related to Chapter 17 (17.6)
- A national consultative or advisory committee comprising all major sectors of society (17.6);
- A list of up to three qualified persons who can serve as panelists on dispute or controversies in matters related to Chapter 17 (17.11).

**E3. Actions taken.** SEMARENA has clearly taken seriously, and been active in responding to, the Dominican Republic's obligations under Chapter 17 in the CAFTA-DR Agreement. One of the most significant actions taken in explicit response to the Agreement was the creation within the Ministry of a Directorate of Trade and Environment (*Dirección de Comercio y Medio Ambiente*) through ministerial decree 10/2006. This office has broad responsibilities in the implementation of the environmental provisions in the Agreement and represents the point of contact for all parties.

SEMARENA participates in the Environmental Affairs Council through the Minister.

The environmental law of 2000, as amended, and the regulatory framework for enforcement have been recognized as adequate by the USTR and the other parties to CAFTA-DR.

Through ministerial resolution 12/2006, a consultative and advisory council was created within the ministry in conformity with the text in Chapter 17.6. This same ministerial decree provides the framework for public participation and full disclosure of meetings and decisions taken.

In addition to its implementation of laws and decrees, SEMARENA has organized numerous workshops and seminars and communicates actively with the public through the media, ministerial publications, and an excellent web site.

The two specific requirements which remain in progress but still incomplete are the formal creation of voluntary actions as described in Article 17.4 of CAFTA-DR, and the naming of up to three qualified members to the Environmental Roster. This latter action is undergoing unnecessary delays.

**E4. External assistance.** SEMARENA has benefited from technical and financial support from a number of international organizations, which it has listed on its web site. The Ministry has also prepared an extensive draft of its priorities for 2007 along with expected results from its activities by 2010. This draft document, "*Metas 2010 y Prioridades de la Cooperación Ambiental con Arreglo al CAFTA-DR,*" places considerable emphasis on training a cross-sector of people involved in environmental matters, financing for equipment, the establishment of a one-stop window, and specific areas of technical assistance.

**E5. Actions to consider.** DICOEX, as the agency with responsibility for CAFTA-DR implementation, should report more precisely than it has on pending obligations such as the voluntary program and the Environmental Roster. It would seem to be a DICOEX responsibility as well to ensure that SEMARENA is ensuring full compliance with the terms of the Agreement in all details. This will require a close analysis of Chapter 17 and equally close consultation with the Ministry.

Partners of SEMARENA, including USAID, should give consideration to those aspects of the Ministry's draft of needs and priorities to determine a rational and non duplicative program of support. USAID should take the lead wherever the matters related to CAFTA-DR compliance.

## **F. SESPAS - State Secretariat of Health and Social Assistance**

**F1. Legal Status and mission.** SESPAS is an institution created by Law No. 4378, as enacted on February 10<sup>th</sup>, 1956 and its legal framework is complimented with its own regulation no. 1312 which was enacted on December 3<sup>rd</sup>, 1995. However, the Dominican Republic's legal framework regarding the Sanitation System changed substantially, with the enactment of the General Health Law (42-01) in 2001 and the law that creates the Dominican Social Security System (87-01).

The Secretary of Public Health and Social Assistance is in charge of carrying out in all of the Dominican Republic's territory, directly or through its technical branches, all dispositions contained in the General Health Law, its regulation and other legal dispositions that are related to Public Health.

At this moment, SESPAS is moving forward with an institutional reorganization process, with the logistical and financial support of the Executive Commission for the Health Sector Reform (CERSS).

**F2. Relationship to CAFTA-DR.** The controlling role that the Secretary of Public Health has regarding the regulation of trade-in goods for human consumption is directly linked with the administration of the CAFTA-DR's Chapter 15, especially in subjects like the drug and pharmaceutical products sanitation registry and undisclosed data protection.

The CAFTA-DR establishes the obligation of the countries that are party to guarantee the protection of pharmaceutical products and agricultural chemicals, for which it should require the presentation of protected data or any other undisclosed data as a condition to approve the commercialization or sanitation registry of these products and new products.

There is also the obligation to protect patented products, which cannot be commercialized by non-authorized third parties, and for this the Agreement establishes that the patent holder be informed for the identity of anyone who solicits the approval to enter a product the market while the patent is valid.

Another of the CAFTA-DR's dispositions that pertain directly to the actions that SESPAS must undertake are in regards to border measures, especially with the imports of counterfeit pharmaceutical products; and in that sense the responsibility for the compliance of this commitment should be done in coordination with DGA and ONAPI. The authorities, therefore, could impose the necessary border measures (without a judge's authorization).

**F3. National Action Plan.** Currently the departments that are related with the implementation of this Agreement in SESPAS, such as the Drugs and Pharmaceuticals Department and the Sanitation Registry, have continued to work without taking into consideration the commitments described in the Agreement.

Authorities and employees have very little in depth knowledge of the implication of the Agreement. However SESPAS is currently undergoing institutional transformation and they have requested assistance in this process.

The human resources are limited and the infrastructure of the involved departments is precarious, nevertheless the technical personnel understand the importance of the development of an action plan and concrete activities to comply with the Agreement.

**F4. Coordination with others institutions.** SESPAS must coordinate with ONAPI and DGA on issues regarding imports of products for human consumption subject to regulation, patent protected products and goods that present protected data, however at this time there are no joint actions taken or coordination mechanisms regarding these subjects.

Relationship with DICOEX is informal. There is no channel of communication or meetings scheduled to monitor compliance.

#### **F5. Specific needs to fulfill CAFTA-DR responsibilities.**

- Train personnel that belong to the departments involved in the CAFTA-DR's implementation. Drug and Pharmaceutical Department, and Sanitation Registry.
- Create a technological tool to control products imported by third parties that do not present the pertaining authorizations related to protected data.
- Create and automate the processes that should be carried out in order to avoid that third parties commercialize patented products.
- Restructure the processes and train the personnel that handle the Sanitation Registries.
- Create a mechanism for the inter-institutional interaction between DGA, ONAPI and SESPAS in order to coordinate border measures.

At this moment, SESPAS is not receiving any international technical assistance for the implementation and compliance of the commitments of the CAFTA-DR.

#### **G. ONAPI - National Office for Industrial Property**

**G1. Legal Status and mission.** ONAPI, the National Office for Industrial Property was established under Law 65-00 in August 2000. . Its main purpose is to secure the protection of invention patents, utility models, industrial design registry and distinctive signs. In addition it carries the Registry for Commercial names.

**G2. Relationship to CAFTA-DR.** ONAPI was deeply involved in the negotiations of Chapter 15 on Intellectual Property rights and played an important role during the process of legislative reforms to secure the entry into force of the agreement. Together with ONDA, ONAPI is responsible for most of the chapter's provisions.

- In order to comply with these obligations, ONAPI has taken the following actions :
- Thorough revisions to the existing regulatory framework, with parallel assessments from international experts.
- With the OEPM cooperation, a capacity building program regarding PCT Administration was undertaken, in order to train the Inventions Department personnel.
- The creation of inter-institutional committees, all coordinated by ONAPI, with different government entities related to this subject such as:
  - 1) The Secretary of Foreign Relations (SEREX);
  - 2) Secretary of Industry and Commerce (SEIC);
  - 3) Secretary of Agriculture (SEA);
  - 4) Secretary of Public Health and Social Assistance (SESPAS);
  - 5) National Copyright Office (ONDA), and 6) the General Customs Agency.

- A capacity building program with WIPO experts and ONAPI qualified personnel, in order to revise the existing norms regarding Intellectual Property and its future reforms.
- The ratification of the Budapest Treaty, and the Patent Cooperation Treaty. In addition the Singapore Treaty and the Trademark Treaty were signed.

ONAPI created an International Department to follow up with implementation of the Agreement and to channel technical assistance. There are other departments implementing CAFTA-DR's obligations, such as the industrial design registry, distinctive signs, and trademark registry department. Nevertheless there is only one person responsible for chemical patents and another for mechanical patents within the Patent Department.

Patents provisions are highly critical in the Agreement. During the process negotiation, the DR delegation faced numerous complaints from USTR. At this point no assistance has been received. The personnel carry out the patent exams with the assistance of the Spanish Patent Office and have developed their own abilities through investigations.

**G3. Coordination with others institutions.** Chapter 15 obligations require collaboration between several institutions such as ONDA and SESPAS. In addition to prosecute piracy and to secure border measures ONAPI needs to coordinate actions with the Customs General Agency (DGA) and the General Prosecutors Office. So far little progress has been made in securing adequate channels of communication and activities coordination. However, the DGA recently created an office for intellectual property violation.

**G3a. DICOEX.** ONAPI maintains a permanent contact with DICOEX, and both institutions closely worked together an adequate understanding of their distinctive roles. There is significant trust on ONAPI's abilities and there is no follow up or monitoring program for the compliance of the obligations pertaining to ONAPI. ONAPI in Intellectual Property matters and in border measures.

**G4. Specific needs to fulfill CAFTA-DR responsibilities.**

- The structure and design of an information technology service system, especially for support programs for industries and universities, especially for those that do not have access to the system through a webpage.
- Dissemination and awareness of the institutional role and the importance of trademark and distinctive signs registration in order to strengthen its protection.
- Regulate the Internet domain registration process (.do), which currently is being handled by a private institution that has no legal basis to justify it.
- Design a program in which DICOEX collaborates with the institution, where an interaction and constant monitoring mechanism is established for the developments that are made regarding this subject.
- Design and structure a Business Intelligence unit.
- Commission a study of the impact of the pharmaceutical sector in the Dominican Republic and patent protection (fabrication and sale of generic products)

- Create a training program for the personnel that works in the patent exams area, especially those who work with mechanical patents.
- Training for institutions that apply internal norms for the compliance of the CAFTA-DR obligations, such as prosecutors, customs officers and judges.
- Design with the collaboration of universities, undergraduate career programs that include subjects pertaining industrial property and the new reality for the Dominican Republic in regards to CAFTA-DR administration.

**G5. External assistance received.** ONAPI has received assistance from WIPO for the creation and development of human resources in matters pertaining to Obligatory Licenses in the Dominican legislation, and training and evaluation of the processes for trademark registration. It has also benefit from experts brought by USAID.

## **H. ONDA - National Office of Copyright**

**H1. Legal Status and mandate.** The National Copyright Office was created under Law no. 65-00 regarding Copyrights, as enacted on August 21<sup>st</sup>, 2000. It was one of the legal provisions that underwent a reform to comply with CAFTA-DR provisions via law 2-07.

The National Copyright Office is a specialized government institution with national jurisdiction, under the Ministry of Culture, and it is responsible to oversee and protect administratively copyrights and related rights. ONDA solves, in a primary scenario and in administrative hearing, the disputes that are rendered to their jurisdiction, by lawsuit or through referral.

**H2. Relationship to CAFTA-DR.** Chapter 15 of CAFTA-DR refers directly to the functions that ONDA must comply with. This chapter raises the standard of protection regarding copyrights. On one hand, it widens the scope, including, for example, the protection of satellite signals that transmit coded programs. Also it establishes a minimum floor for the protection of any kind of work, including software. In addition, this chapter establishes in a detailed manner how the national authority must prioritize observance measures and sanctions to piracy.

**H3. National Action Plan.** ONDA has not been able to develop an Action Plan that allows it to comply efficiently with international commitments, and added to this situation are the budgetary constraints to keep the personnel properly trained with an adequate infrastructure and to maintain monitoring mechanisms in order to fulfill the commitments regarding protection, vigilance and sanctions contained in CAFTA-DR.

Until now and despite its limitations, ONDA has been able to train part of its personnel; however this training has been focused primarily in the persecution of piracy and improper use of satellite signals, in light of the CAFTA-DR commitments and the implications of their violation.

This office is playing the role of coercion rather than preventing these felonies; it doe not have established procedures in manuals; Application Regulation for Law No. 65-00 has yet to be approve; the office has a limited number of personnel, and it does not have the

technology to jointly monitor, with Customs authorities, matters regarding border measures. In addition, ONDA lacks an efficient technological system to register copyrights for literary, artistic and other types of works. This office must also control more efficiently the protection for satellite signal and their retransmission.

**H4. Coordination with others institutions.** ONDA has not been able to develop a relationship with DICOEX. They have had technical meetings in order to identify the Office's needs.

On the other hand, the personnel understands that the fact of being part of the Secretary of Culture limits it, not only regarding budgetary issues, but also in regards to the Office's internal policies.

Even though the General Customs Agency has created an Intellectual Property Department, it has not been able to strengthen its relationship with ONDA to build a communication channel to coordinate protection measures and entry control on certain goods in the country's borders.

**H5. Specific needs to fulfill CAFTA-DR responsibilities.**

- Train personnel regarding the institution's obligation within the administration of the CAFTA-DR.
- Create an interaction space with DICOEX, in order to discuss and monitor the actions developed by ONDA and their results.
- Develop an awareness program for the private sector involved in this subject in order to disseminate the control measures and sanctions that ONDA applies for copyright violation.
- Regulate the violations of public institutions regarding piracy of software used to carry out their responsibilities.
- Create a monitoring center in order to control the retransmissions of satellite signals.
- Create databases in which business that are allowed to retransmit satellite signals are registered. Currently, this process is done manually and then filed physically.

**H6. External assistance received.** ONDA has received precarious assistance. Their participation in training seminars has been limited to one representative. In addition this same representative has received training outside the Dominican territory.

## **I. INDOTEL - Dominican Telecommunications Institute**

**I1. Status and organizational purpose.** INDOTEL is an institution created under the General Telecommunications Law No.153-98 which regulates and supervises the development of the Dominican telecommunications market. Its mission is to regulate and promote the rendering of telecommunications services in benefit of society, in a free, loyal and effectively competitive environment.

It is an autonomous institution, independent, with budgetary solvency and prestige among the private and public sectors. It has a highly qualified and well-trained work

force. INDOTEL actively participates in commercial negotiations, and it has formed a permanent task force composed of the main telephone service providers, such as: Codetel (América Movil), Orange (France Telecom), and Tricom. During the CAFTA-DR negotiation process INDOTEL was responsible for the telecommunications chapter (13) and e-commerce (14).

**I2. CAFTA-DR responsibilities.** Dominican legislation pertaining to telecommunications closely relates to what is stated in the CAFTA-DR text. It guarantees competition, interconnection, and transparency and independence of the regulating body. Decisions made by INDOTEL have been respected by the Federal Communication Commission (FCC).

INDOTEL is aware of its responsibilities under chapter 13 of CAFTA-DR and guarantees its compliance. Up to date it has adopted the new regulation to guarantee number portability and it has sent letters to the telecommunications service providers explaining the responsibilities they have under CAFTA-DR.

INDOTEL maintains good communication with DICOEX and participates actively in their training program. INDOTEL has an International Affairs Division composed of three technicians who coordinate with DICOEX and other departments within the institution necessary to follow-up on international commitments. This Division is the point of contact with DICOEX. INDOTEL also participates in the preparation of the piracy report that is delivered every three months to the USTR.

**I3. National Action Plan.** INDOTEL presented several projects under the National Action Plan; nonetheless it has sufficient financial, technical, and human resources to develop them. Although it can always benefit from training, especially in areas such as procedures for dispute resolution and notifications of disputes, INDOTEL should not be regarded as priority recipient of technical assistance under the execution of this project.

## **J. CNC - National Competitiveness Council**

**J1. Legal Status and mandate.** The CNC was established as a separate government agency under Law 1-06 on January 2006, after 3 years functioning as an appendix of SEIC.

CNC's main objective is to formulate and implement competitive strategies in key production sectors of the Dominican economy and to promote association through cluster formation.

As Council, it is headed by Dominican Republic's President Leonel Fernández and the Ministers of Agriculture, Industry, Tourism, Economy and Planning, the Director of CEI-RD and seven members from the private sector designated by the President that enjoy recognition in Dominican Society as entrepreneurs. However, the CNC is better known by the work of its executive office, staffed by 17 professionals. It enjoys good reputation

for technical capacity, excellent human resources and proactive initiatives. USAID recognized CNC in 2005 as Champion of Institutionalism.

**J2. Relationship to CAFTA-DR.** The Conc.'s lines of action focus on improving the business climate, developing export and trade activities, developing clusters and production chains, and enhancing competitiveness. Most of CNC staff is made up of former CAFTA-DR negotiators; hence the National Plan of Competitiveness (launched on March 2007) is a response to CAFTA-DR challenges and opportunities.

CNC personnel have assisted other government institutions and small business associations with presentations on CAFTA-DR; and have also participated with AMCHAM in road shows disseminating the content of the agreement.

CNC worked closely with USAID/Chemonics Competitiveness Policy Program helping achieve the project's goals. It can be an invaluable ally in this new endeavor and it should play an important role in communications of CAFTA-DR opportunities.

**J3. Coordination with other institutions.** CNC was created as a space for dialogue between public and private sector. All their initiatives need to be agreed on by both public and private sector, thus it enjoys excellent inter-institutional and cross-sector relations.

DICOEX can benefit from the outreach of CNC to increase CAFTA-DR knowledge throughout specific sectors, and broaden dialogue and cooperation through seminars, workshops, and working groups.

CNC has championed administrative reforms that reduced from 76 to 18 days starting a business in the DR, based on exchanging ideas and best practices within public and private sector working groups.

**J4. Monitoring CAFTA-DR.** CNC is currently incubating a project to launch by November 2007 the Competitiveness Observatory, a joint initiative with UNDP. The observatory gathers data and produces reports on DR performance on a variety of indicators.

This Observatory can also monitor CAFTA-DR, together with DICOEX and a private sector institution such as AMCHAM.

**J5. National Action Plan.** The National Competitiveness Plan was the departing point of the National Action Plan. CNC is currently seeking international funds and technical assistance to carry out the Competitiveness Plan. It is crucial that both agencies communicate their activities to prevent duplicating efforts.

CNC coordinates the Donors Roundtable, in which USAID, European Funds, IDB and World Bank donors participate. DICOEX is also part of the government agencies participating at the Roundtable. It is advisable that the Government maintains one locus

for all exchanges and that DICOEX becomes an active participant of these Roundtables.

In addition to that, CNC can assist DICOEX in socializing legal initiatives with private sector stakeholders, review regulations and legislation to ensure CAFTA-DR compliance. CNC recently launched a Program on Regulatory Improvement together with the Legal Advisor to the Executive Power (*Consultoría Jurídica del Poder Ejecutivo*) to train legal aids into evaluating proposed laws and decrees in their conformity to international commitments and in advancing the goal of increased competitiveness.

**J6. External Assistance received.** CNC has been implementing an IDB funded project to promote competitiveness by allocating matching grants to qualifying clusters and to business environment initiatives. It has also received USAID support and later developed a partnership with CPP program.

## **K. CEI-RD - Dominican Center for Exports and Investment**

**K1. Legal status and mission.** The *Centro de Exportación e Inversión de la República Dominicana*, CEI-RD, was officially established in 2003 through Law 98-03 as a wholly state-owned institution with a board of directors and administrative autonomy. The establishment of the Center was made effective through the fusion of two institutions that existed separately. They became the two operational areas of CEI-RD, Export Promotion and Investment Promotion. The Center defines its mission as the promotion and development of Dominican exports and investments in order to integrate the nation competitively in global markets for goods and services.

**K2. Relationship to CAFTA-DR.** Among CEI-RD's institutional responsibilities is participation in bilateral and regional trade agreements. In the case of CAFTA-DR, the Center was especially active during negotiations of chapter 10 and 11 (Investment and Cross border Services). Their professionals also participated to a more limited degree in the services chapters, but left the bulk of negotiations on services to the Central Bank.

Since negotiations of the Agreement got underway, CEI-RD has held seminars, sponsored trade fairs, and conducted studies of interest to its clients, both on the side of the exporters as well as that of current and potential investors. Information on these activities is available to any interested party on the Center's web site. The Center has also published a series of twelve or thirteen informative brochures for distribution on subjects of specialized interest to exports in diverse sectors, such as apparel, shoes, electric parts, automotive parts, cultural artifacts, and so forth.

As the founding of CEI-RD in 2003 coincided with the launching of CAFTA-DR negotiations, its structure from the beginning had an office—the Foreign Trade Division—to accommodate its work on behalf of the Agreement as well as on other trade negotiations.

**K3. The National Action Plan.** Although CEI-RD does not have a direct role in the implementation of the Agreement, it occupies—at least theoretically—a central position in maximizing the benefits of CAFTA-DR. The National Action Plan of 2005 stated clearly that maximization of the benefits of trade agreements is the principal responsibility of CEI-RD. The current (2007) National Action Plan compiled by DICOEX seems to present a more modest, though not unimportant role, for the Center. On the side of commercial activity, this later document describes a market access project in which CEI-RD would create a system of registering and monitoring exports. On the side of investment, the 2007 DICOEX Action Plan outlines a project for enhancing the transparency and simplicity of foreign direct investment through the creation of a one-stop window and a promotional strategy.

**K4. Coordination with other institutions.** CEI-RD is positioned between the private exporting community and the Government. It is meant to be the exporters' first point of assistance in promotion and in the management of export incentives. It is also intended as the first, and continuing, point of contact for foreign investors. As such, CEI-RD is instrumental in providing coordination between the private sector and governmental agencies such as the Central Bank, the Customs Administration, the Ministry of Finance, and DICOEX, among others. CEI-RD maintains that it has permanent contact with DICOEX precisely because it is the primary link of exporters with government.

**K5. External Assistance.** CEI-RD has received support through direct financing of activities or through technical assistance from the IDB and from USAID. At present it has compiled a series of twelve brief project profiles for which it is seeking donor support. These projects include some activities directed specifically at CAFTA-DR, such as financing of the printing and distribution of brochures, and others of direct interest to maximizing benefits of the Agreement, such as analysis of potential in the ITC sector and a study on obstacles to maritime transport of export commodities.

It is noteworthy that one of the proposed activities is the creation of an office for trade intelligence. This proposal raises two questions. In the first place, how can an export promotion agency have functioned effectively for over four years without such a division? Secondly, how will this division complement or replace the activities undertaken by DICOEX's division of the same name?

**K6. Actions to consider.** According to CEI-RD, the institution's role in optimizing CAFTA-DR benefits for the country has been less clear than it was during the phase of drafting and negotiating the Agreement. Given that CEI-RD is *the* export and investment promotion agency for the Dominican Republic, its doubts about its current role are indicative of a more general lack of clarity about the Government's program for the Agreement. Therefore, before embarking on a course of specific assistance to CEI-RD, donor agencies with long-term assistance programs must participate in discussions intended to bring clarity to this issue. Convening one or more meetings with the senior management of DICOEX and CEI-RD will be a necessary first step; the major, initial objective of the meetings should be to determine institutional roles that create synergies and avoid replication.

CEI-RD has not specifically asked for external assistance in the creation of a single window, or one-stop-shop, for foreign investors. Their staff in the investment division is aware of the possible risks and complications inherent in the undertaking and may be entirely capable of designing an appropriate mechanism. Nonetheless, given the multiplicity of failed one-stop-shops across the world, and the existence of a few best practices, the provision of external technical assistance in this area could be useful.

**SECTION III**

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THE PRIVATE ORGANIZATIONS

## SECTION III

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### THE PRIVATE ORGANIZATIONS

#### A. AMCHAM - American Chamber of Commerce of the Dominican Republic

**A1. Status and organizational purpose.** AMCHAM, the American Chamber of Commerce of the Dominican Republic, was established in 1923 as a nonprofit organization with an overall purpose to promote a strong Dominican market economy through beneficial relationships with U.S. commercial and industrial interests as well as through enhanced U.S. investments in the country. The association has nine provincial offices and represents over 2,700 members, of which fewer than 150 are U.S. firms.

**A2. Relationship to CAFTA-DR.** AMCHAM was active in promoting CAFTA-DR since the earliest stages in the negotiation process starting in 2003. Despite some limited, initial opposition to the trade agreement from certain sectors, the majority of its membership expressed a favorable position from the beginning. Overall AMCHAM played an instrumental role in building private sector support for the agreement through its successful communications and advocacy programs.

Since ratification of CAFTA-DR in March 2007, AMCHAM has added a Trade Policy Division with full-time staff to its headquarters and organized a structured program to promote effective implementation and to enhance its members' capacity to benefit fully from the agreement. As part of its normal operations, AMCHAM has organized this year alone eight trade missions, four in the Dominican Republic and four in the U.S., all of them related to CAFTA-DR. Other concrete actions it has taken in support of CAFTA implementation include:

- Preparation and delivery of summaries of CAFTA-DR provisions tailored to specific sectors represented in the membership;
- Detailed information on tariff and tariff rate quotas for exporting and importing firms;
- Biweekly electronic news articles on subjects related to the agreement in a bulletin called "Al Día con CAFTA-DR;"
- A biweekly column titled "Competitividad y Libre Comercio" in the country's major newspaper, *Listín Diario*;
- A web site that is continually updated with information about CAFTA-DR;
- Plans for a weekly television program, to begin in 2008, on themes related to trade, investment, and competitiveness.

Through a program called "Capacitando para la Competitividad," created in 2006, the Chamber has programmed numerous trade capacity building activities for 2007 and 2008. For 2007 these activities include nine workshops and seminars—seven already concluded—that bring Chamber members together with representatives of various public institutions closely involved with the implementation of CAFTA-DR. The themes of 2008 events will touch on agricultural tariff and safeguard issues, trade facilitation, arbitration, intellectual property rights, and valuation of goods in customs. AMCHAM

also plans to prepare databases on tariffs and on technical, sanitary, and phytosanitary norms as well as market studies for future trade missions.

Owing to its mission, size and resources, AMCHAM continues to be a major player in helping to ensure CAFTA-DR implementation and optimization of the Agreement's benefits for Dominican businesses. Through its advocacy and communications efforts, the Chamber maintains strong ties to government offices and to other private sector organizations. It holds regular meetings with the Customs Administration and meets frequently with officials from the secretariats of agriculture, of commerce and industry, of health, and of environment. AMCHAM holds in high regard the advances made by ONAPI in IPR issues. The Chamber also interacts with private sector organizations such as AIRD, CONEP, and JAD among others.

With DICOEX the Chamber has held a privileged relationship, meeting frequently with the Director and the division coordinators. Often it is through DICOEX that AMCHAM channels concerns and proposals to the Government, and on several occasions DICOEX has requested assistance of the Chamber, such as review of legislation that it is drafting or sounding issues with the private sector.

AMCHAM's funding comes through its paid-in memberships and revenue from events and services. In the past, through the Competitiveness Project, Chemonics collaborated closely with the Chamber in several of its activities on behalf of CAFTA-DR by providing expert technical assistance as well as targeted funding for specific communications undertakings.

AMCHAM has expressed publicly its concerns about the pace of implementation. It recognizes that many of the institutions and public entities responsible for timely execution of provisions in the CAFTA agreement are inadequately prepared to meet their responsibilities on schedule—if at all under present circumstances.

**A3. Action planning.** Among both public and private sector entities involved with CAFTA-DR, AMCHAM has one of the most clearly articulated programs of action supported by internal resources for enacting them. Through its Trade Policy Division, it will continue to provide cross-sector capacity-building through the same mechanisms described above. Through this division and its trade facilitation committee it will continue to work on obstacles to efficient delivery of goods.

AMCHAM recommends the creation of an independent private sector entity that would be focused on the implementation, administration, and taking advantage of free trade agreements. It is critical that this entity be adequately staffed and structured in order to assure that it can properly monitor and evaluate the implementation of the agreement in a transparent fashion. This entity would essentially be a homologue to the *Comisión Empresarial de Negociaciones Internacionales* (CENI), which has suffered perennial shortcomings of professional staff and of institutional structures and processes. AMCHAM has indicated its interest in having its Trade Policy Division serve as

secretariat to the new entity, which would be formally recognized as the principal conduit for institutional dialogue between the private sector and DICOEX.

Through the CAFTA-DR Implementation Project USAID should continue support where necessary to AMCHAM's ongoing communication and trade-capacity building programs.

It should also closely consider the Chamber's recommendations regarding an entity that represents the voice and interests of the private sector. Such an entity must have operational autonomy, and it cannot simply be seen as complementary to, or a homologue of, CENI. It will be challenging at the least to create this structure.

## **B. ADOZONA - Dominican Association of Free Trade Zones**

**B1. Status and organizational purpose.** The *Asociación Dominicana de Zonas Francas*—ADOZONA—is a nonprofit organization founded in 1988 in response to strong demand from businesses operating in the Dominican free trade zones and industrial parks. Its mission is to represent its membership and defend their interests politically and economically. Its membership base comprises 15 free trade zone associations, 24 industrial park operators, and five “special” free trade zones, those that were constituted for a single business that could not move its base of operations (e.g., mining operations) or risked compromising its quality of personnel by moving away from urban areas (e.g., call centers).<sup>5</sup> Since traditionally 80 percent of exports from the Dominican Republic have emanated from free trade zone platforms,<sup>6</sup> ADOZONA can be said to represent the majority of exporting interests in the country.

**B2. Relationship to CAFTA-DR.** ADOZONA was always a strong proponent of CAFTA-DR, backed by a membership that supported free trade and that held high expectations for this Agreement in particular. With AMCHAM, ADOZONA formed what came to be known as the CAFTA-DR Coalition—*la Coalición de Apoyo al Tratado de Libre Comercio*—to push the negotiations forward largely by garnering the support of the private sector. The Coalition did not have legal standing but did have a titular executive director and sponsored numerous events, including a series of seminars throughout the provincial centers of the country in 2005.

ADOZONA is a private association with a membership that comprises entirely private business. Its public sector counterpart is the National Free Trade Zone Administration, CNZFE (*Consejo Nacional de las Zonas Francas de Exportación*), an autonomous public agency with responsibilities for approval of free trade zone applicants, administration and regulation of the 1990 free trade-zone legislation, and for global promotion of the Dominican free trade zones. One half of the board of directors of CNZFE is constituted of private sector representatives, all of whom enjoy ADOZONA membership. Relations between ADOZONA and the CNZFE are highly productive.

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<sup>5</sup> See Law no. 8-90 for the legal status of free trade zones in the Dominican Republic.

<sup>6</sup> The processing and export of primary commodities do not take place in free zones.

The Dominican free trade zones at one point employed nearly 200,000 workers; by 2004 sixty percent of the employment was in the apparel industry.<sup>7</sup> At the expiration of the Multifiber Agreement in 2005, however, the textile and garment industries operating in the free trade zones were inadequately prepared to confront the advent of Chinese and other Asian exports in the global marketplace, and nearly one third of the jobs have been lost. The competitiveness of exports from the Dominican Republic has been further compromised by the overvaluation of the peso, and this factor has affected industry and exporters well beyond the garment sector.

There are two technical issues regarding implementation that are frustrating free trade zone industries' efforts to take advantage of the Agreement. One is known as the "pocketing" issue and has to do with the material used to line pant and suit pockets. The other, more far-reaching concern regards the so-called accumulation provisions which would allow incorporation of a percentage of inputs from Mexico. The former concern arises from a small regional protectionist interest in the U.S; the latter can only be resolved multilaterally through full collaboration from all the Central American member states.

During negotiations, ADOZONA was exceptionally active in promotional outreach with its membership and, through the CNZFE, with the Government. It continues to communicate actively with its membership and with the CNFZE and maintains a web site with scheduled activities (none listed at present). ADOZONA in the past has benefited from collaboration with USAID-funded projects.

ADOZONA's concern now is to halt the hemorrhaging of the work force and reverse the trend of diminishing exports. With the Government it is discussing specific measures to compensate income losses due to appreciation of the peso, and it is pushing for an external promotional strategy with and through the CNFZE and other institutions.

ADOZONA's position is that the free trade zones represent the export platform of the country, both through volume and through over thirty years of learning to compete in the global arena. The organization believes it must be a governmental priority to sell the country to investors across the world, and a major—the major—selling point is that the Dominican Republic is the most attractive country for off-shore export to the United States.

Enhanced current investment and, above all, a greater flow of new foreign investment should be the means to recover the losses suffered and gain a competitive position within CAFTA-DR.

**B3. Relationship with DICOEX and Other Institutions.** ADOZONA considers that DICOEX played an important role in getting CAFTA-DR passed. During the current phase of implementation and optimization of potential benefits, DICOEX should convene a multidisciplinary committee to clarify authorities and responsibilities.

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<sup>7</sup> Other important sectors within the free zones, with current employment figures, are medical supplies (10,128), electronics (2,323), jewelry (3,566), services (7,011), and agro-industry (2,510)

This Assessment suggests that ADOZONA must be among the private sector organizations central to promotion and communications. It is a direct liaison to a major component of the private sector and to that component which most stands to profit from CAFTA-DR at present. Its favorable position towards foreign direct investment makes it a natural partner to those units in DICOEX concerned with market access and investment.

To DICOEX ADOZONA can be a source of invaluable information, a channel for communicating to the exporting sector, and a partner in growing the benefits of the Agreement. While ADOZONA feels that the present time is not one for more studies, it can always make use of appropriate external assistance in targeted advertising of the advantages that the Dominican free trade zone and industrial park platform represent to investors across the globe.

### **C. AIRD - Asociación de Industrias de la República Dominicana**

**C1. Status and organizational purpose.** The Industrial Association of the Dominican Republic (AIRD) is the largest industrial organization of the Dominican Republic, comprising the country's most important productive sectors, such as: food and beverages; agro industry, textiles, shoes, steel and metals, plastic products, construction, and pharmaceuticals, among others. At the same time, AIRD represents a great number of regional and sector industrial associations. Founded in 1962, it has more than 130 direct members and close to 1,500 indirect members (through the membership of AIRD's member industrial associations).

AIRD's membership includes top Dominican industries that account for over 20 percent of the direct taxes collected by Dirección General de Impuestos Internos (General Directorate for Internal Revenue - DGII).

**C2. Relationship to CAFTA-DR.** AIRD emerged as a relevant player during the congressional ratification process of the CAFTA-DR, requesting complementary measures for the national industry in light of both the market openings and the import tariffs reduction. In 2005 it promoted a fiscal reform geared towards finding a balance between the government's fiscal sacrifice and the industrial sector's needs. In a general sense, AIRD supports the Agreement's dispositions that provide more transparency and assurance regarding the new market rules, especially the chapters on trade facilitation, market access, government procurement, transparency, and dispute resolution.

The CAFTA-DR served also as a catalyst for reforms within the organization, resulting in changes to its institutional mission and member services. Among the activities and policies that the entity promoted in the 2005-2007 one can mention the following:

- The establishment of an industrial sector policy.
- A proposal for institutional reform, in order to create an entity within the public sector that would watch out for the Dominican industrial sector.

- Proposals of incentives for exports innovation.
- The celebration of the First Conference of the Dominican Industrial Sector in order to foster unification of the sector.
- The planning for the establishment of 3 industrial clusters.
- Opening of an industrial training center.

AIRD's main concern is in regards to the evaluation of the incentive patterns and the cost production analysis of the Dominican Republic versus the other Central American countries party to the Agreement. Also concerns lie in the promotion of how the market field will be leveled with its competitors. AIRD has taken an active role in promoting changes in the Dominican entrepreneur culture, by sponsoring alliance, clusters and capacity building for exports.

AIRD plays an important role in the Dominican political scenario, and amongst its members are the largest national industries, hence at times CAFTA-DR is viewed more like a threat than an opportunity; therefore this could have a reasonable impact in the political and social perception of the Agreement.

AIRD's funding comes generally through its membership fees. However in the process of institutional strengthening after CAFTA-DR, AIRD received technical assistance and/or funding for targeted activities from USAID, IDB/CNC, the Multilateral Investment Fund or IDB (FOMIN), and the Spanish Cooperation.

**C3. Relationship with DICOEX.** AIRD has good relations with DICOEX, mainly in assisting negotiators in building market access offers and also in actively participating in negotiation processes. However, AIRD feels that DICOEX does not have the expertise or political influence to actually implement the Agreement.

AIRD expressed concerns about the pace of the implementation process, particularly regarding the lack of political will to enact existing laws or provisions that are crucial to the sector, such as the commission to enforce the antidumping legislation, the cumbersome import-export procedures, and the establishment of a quality control system.

**C4. Action Plan.** AIRD's plan of action currently is to react to CAFTA-DR issues and prepare a market defense. They do not currently engage in activities to promote CAFTA-DR content, opportunities or conduct any trade missions.

This Assessment suggests that AIRD must be among the private sector organizations central to promotion and communications. AIRD has regained its position as key player in the Dominican economic and socio-political scenario, therefore their vision that the CAFTA-DR is more of a threat than an opportunity could have a reasonable impact in the political and social perception of the agreement.

AIRD could use external assistance to develop targeted services to its membership seeking to learn and benefit from CAFTA-DR opportunities.

Training needs have been identified in the following areas:

- Taking advantage of the CAFTA-DR
- Administration of the Agreement (Follow-up Committees)
- Rules of Origin.
- Dispute Resolution.
- Technical trade barriers.
- Unfair trade practices.
- Business Opportunities under CAFTA-DR.
- Security norms to export to the United States.
- Quality norms, labeling and packaging to commercialize products in the United States and Puerto Rico.
- Distribution channels in the United States and Puerto Rico.

AIRD can be a source of relevant information to DICOEX in evaluating the impact of the Agreement on the local economy, and to provide feedback and private sector views on the performance of other agencies such as Customs, SEA, SESPAS and ONAPI.

#### **D. JAD – Dominican Agribusiness Board**

**D1. Status and organizational purpose.** JAD, the Dominican Agribusiness Board, was established in 1984 as a nonprofit organization with an overall purpose to promote agribusiness joint ventures and foster agricultural exports. JAD has become the largest and most respected agricultural producer association in the country. The institution serves more than 50,000 producers affiliated with 300 associations and federations along 32 product lines.

**D2. Relationship to CAFTA-DR.** JAD was active in promoting CAFTA-DR since the earliest stages in the negotiation process starting in 2003. Despite some limited, initial opposition to the trade agreement from certain sectors, especially the most sensitive crops, the institution participated directly throughout the whole negotiation process. JAD was instrumental in the integration of the private sector in the negotiation and encourage producers and agro-processors to be part of the adjoining room.

JAD provides important policy advocacy activities related to CAFTA-DR and complementary legislative and regulatory adjustments to advance agricultural sector modernization. Since ratification of CAFTA-DR, JAD put forward a national road show to inform producers on CAFTA-DR obligations and opportunities. Similarly, the last 3 annual meetings of agribusiness leaders were organized to analyze the impact of CAFTA-DR and the identification of alternatives to enhance the sector's competitiveness.

Other concrete actions it has taken in support of CAFTA implementation include:

- Preparation and delivery of summaries of CAFTA-DR provisions tailored to specific sub sectors represented in the membership;
- Detailed information on tariff and tariff rate quotas for exporting and importing firms;
- A weekly discussion on CAFTA-DR through its TV program “Agroempresa”;
- A program to promote agricultural clusters in a partnership with the National Competitiveness Council (CNC);
- Promotion of a proposal at the Congress on perishable agricultural commodities to strengthen linkages between local markets (supermarkets, hotels, restaurants) and agricultural producers;
- Monthly meetings between JAD’s board of directors and different government authorities to discuss issues related to the agricultural policy agenda.
- Launching of the Agrifood Fair to promote markets among local producers (via clusters) and the potential buyers/investors from the United States and Central America;

JAD operates an impressive laboratory service covering all aspect of soil, plant, water, forage, processed food products, and Hazard Analysis and Critical Control Point (HACCP) management, and provides laboratory analysis regarding phyto-pathology, entomology, and microbiology. Those facilities are instrumental to provide the necessary lab tests required for agricultural commodities that are being exported to US and European markets. The niche markets (Organic, Fair Trade) for agricultural commodities require different lab tests on areas such as pesticide residues and pest presence.

JAD operates the Agro Data Center to provide services to its members on market intelligence, project appraisal, import/export agricultural trade, price information, cost of production and other types of information related to the agribusiness sector. Through this center JAD is preparing a Data Base on the CAFTA-DR related to TRQs schedules, tariffs and on technical, sanitary, and phytosanitary norms as well as market studies for the main agricultural activities.

The “Bolsa de Productos Agropecuarios, BARD” (Agricultural Commodities Exchange) is an initiative being operated at JAD headquarter with a moderate success. To date some commodities have been traded on BARD. Some of JAD authorities have suggested that the allocation of the Tariff Rate Quotas could be auctioned through BARD, which is not allowed by CAFTA-DR.

Additionally, JAD has been very active in the discussion and preparation of initiatives to provide support to agribusiness activities. Specifically, JAD devotes great efforts to lobby with the main public institutions in favor of its members. Most of these activities

aim at reducing transactional costs and strengthen the business climate for agriculture. One of the services more demanded from JAD's members is dealing with tariff imposed on agricultural inputs. In that sense, JAD has proposed, successfully, zero tariff for all inputs used in the agricultural production.

Owing to its size and resources, JAD continues to be a major player in helping to ensure CAFTA-DR implementation and optimization of the agreement's benefits for Dominican agribusinesses. Through its advocacy and communications efforts, the JAD maintains strong ties to government offices and to other private sector organizations. It holds regular meetings with the Customs Administration and meets frequently with officials from the secretariats of agriculture, of commerce and industry, of health, and of environment. JAD also interacts with private sector organizations such as AIRD, CONEP, AMCHAM, the Agricultural and Forestry Development Center (CEDAF) and the National Association of Hotels and Restaurants (ASONAHORES) among others.

With DICOEX JAD has held a good relationship, meeting in several occasions with the Director and the division coordinators.

Most of JAD's funding comes through its paid-in memberships and a Trust Fund created years ago. USAID provided the seed money for the creation and operation of JAD during the first years. Additionally, the institution has managed several projects with the financial support of the Inter-American Development Bank and the private sector.

JAD has expressed publicly its concerns about the pace of implementation and the need to provide more information on the process of quota allocations. It recognizes that many of the institutions and public entities responsible for timely execution of provisions in the CAFTA agreement are inadequately prepared to meet their responsibilities on schedule—if at all under present circumstances.

**D3. Action planning.** JAD is the main private agribusiness institution that also has prepared an Action Plan to deal with CAFTA-DR issues. The cadre of professionals on different technical areas and the structure of the institution on working committees by crops, allows the implementation of initiatives with high stockholder's participation.

DICOEX and JAD will act as collaborating partners in CAFTA-DR implementation. JAD can provide guidance and technical assistance to DICOEX and the Directorate can serve as an implementing governmental organization, a coordinator, a channel for donor-funded technical assistance, and an official monitor of progress in implementation and economic benefits. Some of the specific activities the two organizations can work on are:

- Development of a technical unit to coordinate/prepare training activities (short courses, seminars, workshops) on technical and policy areas related to CAFTA-DR in agriculture, as well investment opportunities. Some of this work can be provided with internal resources; other aspects will require external assistance.

- A system for monitoring compliance with CAFTA-DR in agriculture (sanitary and phytosanitary measures) and agricultural market access (TRQs and Safeguard).
- A system for gathering, analyzing, and disseminating data on the economic impact of the agreement and, especially in the early stages, studies on the complementary agenda of improvements to the business regulatory environment.
- Collaboration in public awareness efforts through newsprint, radio and television, and paper or electronic mailings on subjects of urgency, general importance, and specific interest.
- A comprehensive Pre-inspection program and food safety in partnership with SEA, CEI-RD, with the collaboration of the Customs Authority, the ministry of Health, the Port Authority and the Drug Control Enforcement Directorate (DNCD). This will ease the process of transport and logistic of the container being exported.

**SECTION IV**

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DICOEX - DIRECTORATE OF FOREIGN TRADE

## SECTION IV

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### DICOEX – DIRECTORATE OF FOREIGN TRADE

#### A. Brief History and Overall Mission

The Department of Foreign Trade belongs to the system of the State Secretary of Industry and Commerce. It was established in 2002, by Resolution No. 182-02. DICOEX's main objective is to assure compliance with all commitments established in trade agreements, participate in trade negotiations and offer business intelligence.

Before the CAFTA-DR's entry into force, DICOEX would report to the Sub secretary of Foreign Trade and consisted of a department director and two technicians. Its mission was to administer the free trade agreements with CARICOM and Central America through the participation in meetings and channeling information. It would also serve as support for the negotiations of the Free Trade Area of the Americas (FTAA).

During the legislative adjustment process for the CAFTA-DR's entry into force, DICOEX led a multidisciplinary and inter-institutional team that worked solely in the compliance of the requirements indicated by the USTR. In November 2006 a new Foreign Trade Director was designated, which was also supported with the hiring of personnel to carry out the arduous tasks. It is fair to say that the CAFTA-DR's implementation process shaped and gave content to DICOEX's present structure.

DICOEX's new structure<sup>8</sup>, after the enactment of Decree No. 610-05 in November 2<sup>nd</sup>, 2005, includes a Superior Council comprised of authorities from other government institutions that have relevance in the implementation and the beneficial use of international trade agreements, called CONIAT (National Council for Implementation and Administration of Agreements). It also has 4 technical units: Business Intelligence, Market Access, Trade Disciplines, and International Cooperation. Each unit handles specific subjects related to the CAFTA-DR content.

**A1. Business Intelligence Unit.** The Business Intelligence Unit was created when DICOEX was restructured in 2005. It has two essential functions: Administer the Database and render analysis for a required inquiry, from other areas of DICOEX, as well from other government and private sector institutions. The database contains generally trade flows, a law compilation and some reports.

This Unit is geared more towards taking advantage of the Agreement rather than its implementation or administration. It has a coordinator and 4 aides that manage the following areas: United States, the Americas, and one responsible for Asia, Europe and the English-speaking Caribbean.

**A2. Market Access Unit.** It must monitor subjects pertaining to technical trade barriers, rules of origin and customs administration; agricultural goods and sanitary and phytosanitary measures as well as textile and manufactured goods. It is responsible to

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<sup>8</sup> See Annex A.

follow up and the national coordination of the Trade-in Goods Committee, Agriculture Trade Committee, Sanitary and Phytosanitary Committee, Technical Trade Barriers Committee, and the Working Groups for Customs Administration and Trade Facilitation that the CAFTA-DR establishes for its administration. It is comprised of a coordinator and three junior staffers.

**A3. Trade Disciplines, Legal and Institutional Matters Unit.** This Unit is in charge of all non-commercial aspects contained in the Free Trade Agreement. Its main objective is in a strict sense of the CAFTA-DR's administration, is to follow up and monitor the compliance of the commitments contained in chapters 8, 9, 10, 11, 12, 13, 15, 16, 17, 18, and 20 that deal with antidumping measures, intellectual property, investment, services including financial services and telecommunications, government procurement, labor, environment, and dispute settlement. Of the thirteen (13) groups and committees that the CAFTA-DR establishes, this unit is responsible for the technical support and monitoring of eight (8), including the Free Trade Commission. It has one coordinator and 5 junior staffs.

**A4. Trade Capacity Building and International Cooperation Unit.** Coordinates cooperation and technical assistance for the implementation and beneficial use of Agreements. It also includes assistance for negotiation processes and training for institutions linked to trade agreements and the general public. It is responsible for following up on chapter 18 that makes up the Trade Capacity Building Committee and for the continuous update of the National Action Plan. It has one coordinator and two aides.

## **B. Mission and Purpose in the CAFTA-DR Context**

CAFTA-DR entails a 20-year implementation process, which requires coordination among different government agencies. DICOEX is the administrative head that monitors and supervises the compliance of these commitments.

The CAFTA-DR provides for its implementation and administration the creation of 8 committees, one working group, a dispute settlement office, the designation of information points, and the Free Trade Commission, which is responsible for the decision-making in the Agreement's framework. The Dominican Republic assigned as their representative for the Free Trade Commission the Sub-Secretary of Foreign Trade of the Secretary of Industry and Commerce.

Each commission, committee, and working group has concrete actions to execute in the Agreement's implementation process. DICOEX has compiled in a document the main actions for each committee. However, the CAFTA-DR administration system has experienced some delays in incorporating and has not held the meeting to establish the committees and work plans. Only the Trade Capacity Building Committee has continued its meetings to channel the assistance provided by international donors.

DICOEX presently has a significant degree of internal work that it must accomplish, like drafting the Dominican proposal of the Procedural Rules for Dispute Settlement, drafting the Dominican proposal for the formation of a organization or similar mechanism to appeal for the investor-state dispute settlement procedure, complete the selection and notification procedure of arbiters for not only chapter 20, but also for the labor and financial services chapters. There is also pending the designation of the administrative office for dispute settlement and to prepare the procedures for the administration of these disputes.

DICOEX has also taken on the role of notifying the different state institutions of the pending commitments and their compliance after the Agreement's entered into force, such as the modification to the Dominican insurance law that is to happen 4 years after the Agreement's entry into force, or the termination of the temporary Rules of Origin between the Dominican Republic and the United States which are due for march 2008.

### **C. Major Findings**

DICOEX is greatly a product of the demands during the legislative adjustment process that preceded the entry into force of the CAFTA-DR and maintains its reactive character that said process demanded. Although it has work plans and defined organizational structure, DICOEX's actions continue toward the satisfaction of public inquiries, some of them of a very general character. Dominican society's expectations created by the Agreement have turned DICOEX into the central axis to obtain information. However, 6 months into the Agreement's entry into force, several issues are highlighted that seriously limit DICOEX's capacity to effectively compliment the task of administrating and assuring the implementation of the CAFTA-DR's dispositions.

The following highlighted points summarize the categories of identified situations by the majority of the interviewees. Being that an evaluation is supported with interviews and in the consultant's and participant's perception, we present some of the concrete examples cases that better illustrate the major issues that DICOEX faces.

**C1. Ambiguous or Insufficient legal authority.** DICOEX has the recognition of the private and public sector as the administrator and know-it-all of the CAFTA-DR. In occasions the Congress has sent to DICOEX, law projects to assure compliance with the Agreement.

However, the reach of DICOEX's competence is not adequately defined. When it acts as coordinating agent, supervisor or executor for the Agreement's dispositions, it is not clearly internally established, and the result depends a lot on the attitude and sensibility of the other official institutions to assimilate its recommendations or instructions.

In regards to financial services, for example, there are no mechanisms for information exchange and coordination of pending implementation actions. According to what the Agreement establishes, the Central Bank, in coordination with the Supervising Agency for Banks and Insurances, is the designated member of the Financial Services

Committee. However, due to the lack of communication and interaction with DICOEX, there is no precise information regarding the state and level of preparation to comply with the following CAFTA-DR commitments, among others:

- a) Establishment of a roster of up to 30 individuals who are willing and able to serve as financial services panelists according to procedures and specifications of article 12.18.3.
- b) Development of investment dispute procedures according to article 12.19.
- c) Legal reforms or administrative provisions to ensure that:
  - ✓ Insurance Law allows the operation of foreign branches.
  - ✓ Cross border financial services can be provided in the DR following clear and simple procedures, which may include registration of providers.
  - ✓ Special law or provision that defines what is a collective investment scheme.
  - ✓ Foreign institutions in the DR can provide new financial products.
  - ✓ Clear definition of what constitutes "doing business" and "solicitation" for cross border financial services.
- d) Status of financial services chapter's suspension with Guatemala, and banking services provisions with all Central American countries (2-year hiatus requested by DR).

It is evident that not all institutions, including some that are directly affected by the Agreement's commitments, recognize the authority that DICOEX has to require information or the execution of determined actions.

DICOEX has commissioned a study to strengthen its legal base, in which there should be reference to the CONIAT, superior organization constituted in 2005. Meanwhile, it is recommended that DICOEX strengthens its role as a coordinator by conforming the working groups on a technical level, since given the large scope of the CAFTA-DR, fear might be generated for the displacement of institutional competences.

DICOEX must clearly establish according to the Agreement's text, which are its direct functions and which it coordinates, by fundamentally taking care of the appropriate channels to solve any dispute in the framework of the Agreement's application.

**C2. Reactive Structure and Modus Operandi.** Young professionals and university students comprise DICOEX's personnel. There is a great energy and disposition to respond to the clients/user of the Department, may they be internal, or from other public institutions or private sector.

We have indicated that DICOEX's present structure, while being consistent with other treaty administration or foreign trade offices, it obeyed the pressure of the legislative adjustment process previous to the entry into force of the CAFTA-DR. There are no job descriptions or procedural manuals. Each unit has a work plan, but their execution is suspended continuously to attend to various requirements. The need to address all the inquiries that are directly received, illustrates the excellent disposition and the

attentiveness that DICOEX and its staff has to answer promptly to its user, as well as its lack of clarity in regards to the concrete tasks of the institution and its respective units.

Between 60-75% of work time is spent in answering inquires from the general public. The information is managed at very personal levels, therefore the acquired knowledge is held by individuals, not by DICOEX. There is a need for greater information systemization, use of technological tools to produce updates and generate data for its own analysis and for others. It is evident that there is a need to refer to other institutions or to establish a webpage for general questions and information that can be found on the texts, so they can be addressed without the intervention of DICOEX's personnel.

This very moment presents us with the opportunity to reevaluate DICOEX's structure in regarding to the next requirements of the Agreement's administration.

**C3. Roles and replication.** DICOEX as coordinating body moves in a gray area between monitoring and executing actions. It is imperative to define when DICOEX's personnel act as member of a working group, as coordinators of activities, providers of administrative support or are directly responsible for delivering results.

An interesting case can be found with the Trade Disciplines, Legal and Inter-institutional Matters Unit. Of the thirteen (13) groups and commissions established in the DR-CAFTA, this unit is responsible for the monitoring and technical support of eight (8), including the Free Trade Commission, in addition to other responsibilities duly identified previously in this document. However, 60% of the time specialists spend in addressing inquiries that range from general information all the way up to the issuance of an opinion regarding a law project in Congress.

According to the evaluation of the coordinator, the most frequent inquires are in regards to intellectual property and investment. The latter two include questions on how to invest in the Dominican Republic. The Unit directly assumes and answers even though both subjects have their respective responsible institutions<sup>9</sup> that have ample knowledge regarding CAFTA-DR, and it is part of the institutional mission to provide the public with this information. Besides the evident duplication of efforts, there is also the high risk that functions that are exclusive to DICOEX could be mishandled, affecting the beneficial use and effective compliance with the Agreement. The structure of these committees, the internal training, and the determination of procedures pertaining to dispute settlement and following up on the Agreement's calendar must be the main focus for this Unit's technicians.

## **D. Recommendations**

DICOEX is an evolving institution. It has undergone tremendous transformations in the past 9 months. It has assumed great responsibilities and carried them out successfully. In the process it relied on passion, energy and hard work. Now, to ensure high performance it needs to work on structure, procedures and clarity of mission.

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<sup>9</sup> ONAPI and CEI-RD

Fortunately, technical assistance and cooperation are available to rapidly provide DICOEX with these tools and continue to support the implementation process of CAFTA-DR.

To avoid the duplication of efforts and replicate the actions that are within the competence of other institutions, DICOEX needs refocus its activities to reach a more relevant audience for its duties. One idea is to develop projects and manage initiatives that could fuel specific activities of various public or private agencies.

The international technical assistance should support the creation of initiatives and programs whose execution and sustainability is guaranteed by institutions designed for those means. Work by the Business Intelligence Unit should clearly be developed with CEI-RD and private sector associations that are the entities in charge of the beneficial use of the Agreement.

Also, the successful training programs that the Trade Capacity Building Unit coordinates, could focus on training in regards to DICOEX's competence and the government agencies that administer CAFTA-DR processes, and stimulate universities, business associations, and technical institutes to obtain assistance in permanent programs that last through time and could reach a greater audience.

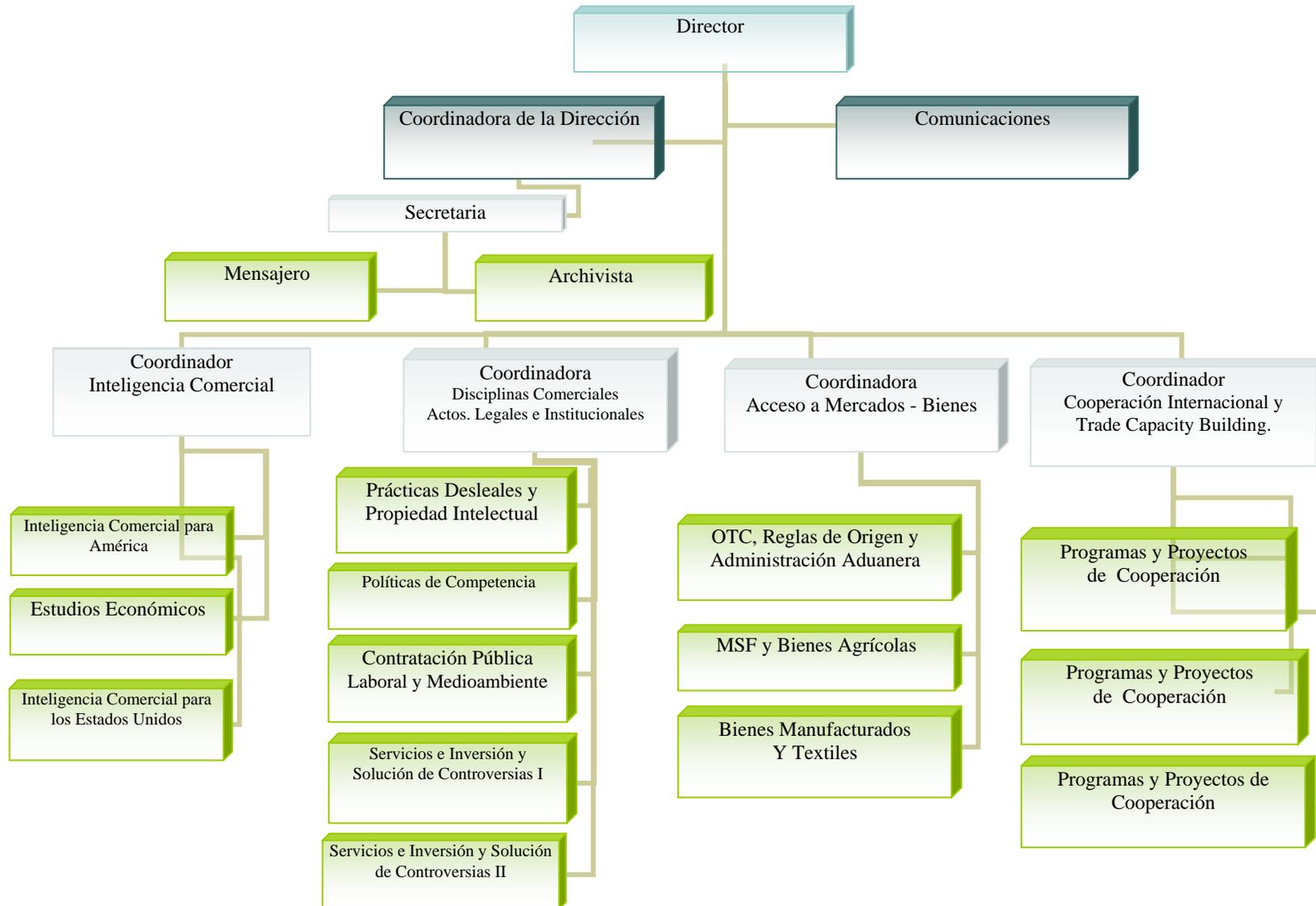
**ANNEX A**

**DICOEX ORGANIZATION CHART**

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# ANNEX A

## DICOEX ORGANIZATION CHART



**ANNEX B**

**PERSONS INTERVIEWED**

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## **ANNEX B**

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### **PERSONS INTERVIEWED**

#### **U.S. ORGANIZATIONS**

Chemonics International  
Mr. Luis Chaves  
Dr. Rubén Núñez  
Ms. Patricia Yanes

USAID/Dominican Republic  
Mr. Luis Gonzalez  
Mr. Duty Greene

#### **DOMINICAN PUBLIC INSTITUTIONS**

##### **ANJE**

Mr. Bernardo Fuentes

##### **CEI-RD**

Ms. Rosa Amelia Abreu  
Ms. Acelis Ángeles  
Ms. Aguié Lendor  
Mr. Federico Martí

##### **DGA**

Mr. Johnny Martínez

##### **DICOEX<sup>10</sup>**

Mr. Pablo Amaury Espinal  
Mr. Alberto Duran  
Mr. Manuel Rodríguez  
Ms. Yahaira Sosa  
Ms. Karina Alcántara  
Ms. Miguelina Estevez

##### **HACIENDA**

Ms. Miriam Acosta

##### **INDOTEL**

Ms. Luz Bello  
Ms. Jasne Rodríguez

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<sup>10</sup> Most if not all DICOEX staff in the technical divisions participated in some measure during the interviews. The names listed here represent those senior managers who were themselves formally interviewed.

ONAPI

Ms. Gianna Franjul  
Ms. Ayalivis García

ONDA

Mr. Carlos Medina

OTCA

Ms. Leslie Marmolejos  
Ms. Ruth Santos

PRO CONSUMIDOR

Ms. Carmen Meléndez

SEIC

Mr. Alejandro Arredondo  
Ms. Maximina Santana

SEIC/DIGENOR

Mr. Héctor Martínez

SEMARENA

Ms. Rosa Otero

SEREX

Ms. Miosotis Rivas

SESPAS

SET

Ms. Anina Castillo

## **DOMINICAN PRIVATE ORGANIZATIONS**

ADOZONA

Mr. José Torres

AIRD

Ms. Circe Almánzar

AMCHAM

Mr. William Malamud  
Ms. Natalia Polanco

JAD

Mr. Osmar Benítez

**ANNEX C**

**DOCUMENTS CONSULTED**

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## ANNEX C

### DOCUMENTS CONSULTED<sup>11</sup>

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- Rivera, Hugo. “Commitments Undertaken by the Dominican Republic and Actions it will Have to Take.” Santo Domingo: USAID, May 2005.
- Scheker, Elka. *Las Negociaciones del CAFTA-DR*. Santo Domingo: UNIBE, 2007.

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<sup>11</sup> This list does not include the many brief, normally unpublished documents produced by the organizations interviewed.