

# **Costa Rica Doesn't Need CAFTA to Benefit from U.S. Trade Preferences**



*With Dr. Henry Mora, Economist*

**September 2007**

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## **Introduction**

Costa Rica benefits from provisions of the Caribbean Basin Initiative (CBI), which is used as shorthand to refer to three interconnected U.S. trade initiatives: the Caribbean Basin Economic Recovery Act (CBERA) of 1983; CBERA's conversion into a permanent preference program with additional benefits with the same name in 1990; and the Caribbean Basin Trade Promotion Act (CBTPA) of 2000, which provides additional benefits for countries meeting certain criteria.

News reports have indicated that some U.S. and corporate officials are trying to pressure Costa Rica into ratifying the NAFTA-modeled Central America Free Trade Agreement (CAFTA) in the upcoming October 7 popular referendum on the false basis that duty-free access for Costa Rican exports to the U.S. market will disappear because U.S. preference programs for Costa Rica will expire.

However, as this report explains, CBI is a permanent program, with no expiration date, that can only be terminated by an express act of the U.S. Congress to revoke the legislation that made CBI permanent in 1990. Furthermore, only a tiny fraction of Costa Rica's trade depends on aspects of CBI that require renewal, and these aspects of the program are also very popular and likely to be renewed, for reasons that are explained in the report. The non-linkage of CAFTA with CBI was most recently confirmed in letters written by Senate Majority Leader Harry Reid (D-Nev.), House Speaker Nancy Pelosi (D-Calif.), and Rep. Linda Sánchez (D-Calif.) of the House Foreign Affairs Committee in September 2007. All have supported preference program renewal in the past, along with the majority of Congress.<sup>1</sup> Their letters are included as an appendix to this report.

### **1. CBI is a permanent program.**

This report's central purpose is to make clear that, unlike other U.S. trade preference programs such as the Andean Trade Promotion and Drug Eradication Act (ATPDEA), **CBI is a permanent program with no expiration date that would require explicit congressional action to revoke.**

Against the backdrop of U.S. "Cold War" operations in Central America and the Caribbean, the Reagan administration signed into law the original CBI of 1983 as "a Marshall Plan tailored for the Caribbean," in the words of one scholar.<sup>2</sup> Specifically, CBI was meant to expand and simplify the benefits of the Generalized System of Preferences (GSP) for the Caribbean and Central American region. During the 1980s, CBI proponents came to fear that the program, which ran for 3-5 year terms, would either not be renewed, or that requiring regular congressional renewal votes would become too politically burdensome. As a result of intensive lobbying by the retail and clothing industry and other interests, CBI was made permanent in 1990. Among the justifications for permanence, according to those that pushed for it:

- "Whatever other free trade agreements come to pass, [CBI permanence] will mean the Caribbean has a program in place that won't come to an end," said Bennett Marshall, legislative director of Caribbean-Central American Action.<sup>3</sup> Marshall also told *The Miami Herald* that, "With all this talk about Mexican free trade agreement [i.e. NAFTA], at least the CBI countries will have something in place, whereas everyone else is talking prospectively."<sup>4</sup>

- “The best thing that the House-Senate conferees can do right now is to make the CBI permanent. That would offer it some armor against [congressional] protectionists,” said *The Miami Herald* editorial board in a piece entitled “Make CBI Permanent.”<sup>5</sup>

That the program is permanent has not stopped various U.S. officials from making dishonest claims and threats about the program as a means of pressuring countries to comply with U.S. demands. For instance, in March 2005, a Bush administration official was quoted in a Costa Rican newspaper as saying: “Allow me to be absolutely clear on this point: in order to benefit from duty-free access to the U.S., the countries of Central America and the Dominican Republic will have to ratify CAFTA.”<sup>6</sup> The Bush administration’s ambassador to Costa Rica, Mark Langdale, said much the same thing just days after being confirmed by the Senate.<sup>7</sup> In 2007, Langdale’s threats became even more explicit, pronouncing in March that “the only way to enter into the U.S. market permanently is through the treaty.”<sup>8</sup> In July, Langdale again said that Costa Rica is “losing the trade train.”<sup>9</sup> In August, after the date of the referendum had already been set,<sup>10</sup> Langdale told Costa Rican paper *Prensa Libre* that he was visiting businesses in Costa Rica, advocating for CAFTA:

“‘People are asking a very important question right now: what’s going to happen to our jobs in export-oriented sectors? There are some Costa Ricans who think that the CAFTA decision will not have consequences, but 20% of the jobs in Costa Rica’s economy are associated with exports,’ said Langdale... ‘It’s necessary that Costa Rica participate in trade agreements if it wants to continue its exports,’ added the U.S. ambassador.”<sup>11</sup>

Of course, the Bush administration’s threats were merely mendacious bluster, premised on an arrogant assumption that the Central American audience did not know the facts. The truth is that it would require an explicit act of Congress to eliminate CBI. The 1990 CBI legislation literally repealed the act’s termination date,<sup>12</sup> a fact highlighted by powerful chairman of the House Ways and Means Committee Rep. Charles Rangel (D-N.Y.). Then-ranking member Rangel reminded the Bush administration that CBI is a “congressionally mandated program [whose] benefits are guaranteed on a permanent basis, unless the Congress amends current U.S. law.” Rangel said that he would oppose such an amendment of U.S. law, characterizing the administration’s dishonest threats aimed at the Central American countries as “thinly veiled blackmail.”<sup>13</sup>

## **2. Are there any scenarios for CBI repeal?**

The CBI legislation envisions four scenarios whereby CBI benefits could be terminated – expiration of the program is not one of them. First, Congress could take express action to revoke the entire CBI program, which (as explained below) is unlikely to happen because of the political popularity of the program within the U.S. Congress and the politically powerful retail and importing industry.

Alternately, Congress could pass legislation removing a specific country from being considered for benefits under CBI. The U.S. Trade Representative’s (USTR) office has identified two dozen countries and territories as “designated to receive [CBI] benefits,” while four more “have also been identified by Congress as potentially eligible for benefits, but have not yet requested beneficiary status.”<sup>14</sup>

Here again, it is highly unlikely that Congress would act to remove certain countries from eligibility for CBI benefits. First, U.S. retail and importing firms would insist on the maintenance of preferences

for those CBI countries for which duty-free exports to the U.S. market under CBI represent an economically significant activity. More importantly even, for a qualified country for which CBI benefits are not being used, Congress has never bothered to take time out of its busy schedule to craft specific legislation to remove a country. For instance, U.S. trade law lists Suriname and other countries for benefits under CBI. The U.S. Congress has never acted to remove that country from CBI eligibility even though Suriname has never requested benefits under the program. Thus, it is extremely improbable that Congress would ever act to revoke CBI benefits for Costa Rica.

Moreover, during the recent debate over the ATPDEA, Bolivia and Ecuador were not removed from the trade preferences program, even though these countries rejected a NAFTA-style trade deal with the United States, and are actually aligned with Venezuela (an alignment viewed negatively by much of official Washington). Nonetheless, even though it would have been easy to do remove Bolivia and Ecuador, this did not happen, and the preferences were unanimously approved by the Senate, overwhelming approved by the House, and readily signed into law by the Bush administration.\* This strong bipartisan, bicameral support for trade preferences for countries whose governments are perceived as strongly opposed to the Bush administration shows that there is no reason for Costa Rica to be concerned about being removed from trade preference programs regardless of which party controls the executive or legislative branches of government.<sup>15</sup>

A second way that CBI benefits could be terminated is for a given country *for cause*. This is a process and determination at the discretion of the U.S. executive branch. The president may “withdraw or suspend the designation of any country as a [CBI] beneficiary country, or withdraw, suspend, or limit the application of duty-free treatment under this chapter to any article of any country,”<sup>16</sup> if the country fails to meet certain conditions.<sup>17</sup>

These conditions include that the country be non-communist; that no nationalizations of (or tax measures that effectively nationalize without a fair process and compensation) U.S. investor-owned property have taken place in the country; that the country make good faith efforts to participate in binding international arbitration in the event of investment disputes; that the country not make trade concessions to other developed countries which have an adverse impact on U.S. trading interests; that the country’s state-owned television not broadcast copyrighted, U.S.-owned materials without express consent of the U.S. right holders; that the country not be party to a treaty regarding the extradition of U.S. citizens; and that the country be taking steps to afford internationally recognized labor rights. However, if the president determines that designation of a country “will be in the national economic or security interest of the United States,” he or she can waive most of these requirements.<sup>18</sup>

Since 1994, suspension of CBI benefits for specific articles based on cause has only occurred *once*, in the case of Honduras over intellectual property rights issues, and the country’s CBI benefits were reinstated months later.<sup>19</sup> In another high profile case, labor rights groups attempted repeatedly to have

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\* Following the overwhelming House passage of ATPDEA on the suspension calendar (a parliamentary rule that speeds debate and passage of very non-controversial bills), the trade policy leaders in the House from both the Democratic and Republican Parties put out a joint press release praising the program as “a successful extension of our diplomacy and development efforts in this region” and noted that it has “received strong bipartisan support since its inception in 1991.” During the Senate debate on ATPDEA in late June, Senate Majority Leader Harry Reid (D-Nev.) said he hoped for “a multiyear extension.” Sen. Max Baucus (D-Mont.), who chairs the Senate Finance Committee, which has jurisdiction over trade issues, praised the preferences as beneficial for both the United States and the Andean countries, calling the June vote as “a stepping stone” toward a “longer term extension.”

CBI benefits from Guatemala removed on the basis of a failure to uphold internationally recognized labor rights – efforts which have been unsuccessful.<sup>20</sup> There is no record of an attempt to have Costa Rica’s CBI benefits revoked through the GSP petition process.

Even where outside groups have made efforts to remove CBI benefits for cause, these have been largely unsuccessful, because no recent U.S. administration has shown a desire to increase the perception of “political conditionality” on trade relations, a situation which is likely to remain so for foreseeable future administrations. For instance, the current Bush administration loathes what it calls “non-trade conditions” being attached to “free trade.” The administration has strongly defended its ideological belief that political, human rights, labor and other considerations should not be connected to commercial relations. As a result, the Bush administration has tried several times to liberalize trade with Cuba, although Congress has thwarted this effort. It is not that the Bush administration is warming up to Fidel. Rather, the administration is facing growing pressure regarding the terms of trade with “communist” China from within its own Republican Party. The corporations closely tied to the Bush administration want no changes in China trade policy and thus they have pushed changing trade relations with Cuba to show that U.S. trade policy does not link politics and business. With China’s huge trade surplus with the United States and its build-up of military capacity and threats against Taiwan – all of which have generated Republican congressional pressure to change China policy – the administration cannot risk setting *any* examples of conditioning U.S. trade relations with countries on political factors. The mechanism the administration uses to condition trade relations on non-trade matters is to declare a country to be a “terrorist” state, and there is little risk that Costa Rica will face such a designation.

A third way that CBI benefits can be terminated is for specific articles if the U.S. president makes a proclamation suspending duty-free treatment on a given product because this product is flooding the U.S. market. The threshold for such an import surge is statutorily defined and subject to some restrictions based on national security considerations. In addition, CBI has special rules governing emergency relief from imports of perishable agricultural products from beneficiary countries.<sup>21</sup> According to U.S. trade law language that is referenced in CBI along with all trade agreements and preference programs, if “an article is being imported into the United States in such increased quantities as to be a substantial cause of serious injury, or the threat thereof, to the domestic [U.S.] industry producing an article like or directly competitive with the imported article, the President, in accordance with this part, shall take all appropriate and feasible action within his power which the President determines will facilitate efforts by the domestic industry to make a positive adjustment to import competition and provide greater economic and social benefits than costs.”<sup>22</sup>

According to the U.S. Department of Commerce, the United States has only approved anti-dumping/ countervailing duty actions against one CBI member in recent history – Trinidad & Tobago – for policies related to wire steel rods.<sup>23</sup> In general, suspension of CBI benefits by these means is unlikely, since there are so few items from Costa Rica that are exported in high volume to the United States that are also competitive with products made in the United States that also benefit from CBI provisions.

In summary, removal of CBI benefits by revocation of the entire program, for cause or for import protection is highly unlikely, and certainly not a legitimate basis to consider a U.S. FTA. Now we turn to a fourth, final and just as unlikely way that CBI benefits could be partially revoked.

### **3. The status of the CBI add-on programs: CBTPA is popular and will be renewed.**

In addition to the permanent CBI, CBTPA offers additional market access, including for many textile and apparel items. CBTPA, like the underlying CBI, has conditions for eligibility and suspension of benefits for countries and certain products. Unlike the underlying CBI, the additional CBTPA benefits do have a termination date.

If CBTPA is not renewed, this would be the final way that the CBI-plus benefits could be rescinded. However, this is unlikely to happen for Costa Rica or other non-CAFTA, CBI countries before September 2008, at which time CBTPA would have to be renewed so as not to have a lapse in duty-free treatment for articles coming from these countries.

CBTPA – colloquially known as CBI NAFTA Parity – was established in 2000 as a response to Central American countries’ claims in the 1990s that implementation of the North American Free Trade Agreement (NAFTA) put them at a competitive disadvantage in the U.S. apparel market *vis-à-vis* Mexico. They argued that broader duty-free treatment for Central American-produced and –assembled textile and apparel exports to the U.S. market was needed.<sup>24</sup> Among the arguments of CBTPA’s proponents:

- Since NAFTA was implemented, “We have seen a huge drift of industry from our region to Mexico ... NAFTA parity is something that’s been promised to us, and it is something that we desperately need or else everyone loses,” said Carlyle Dunkley, an official with Jamaica’s trade ministry.<sup>25</sup>
- “Central Americans are not asking for much, and they are not asking for charity. They want a level trading field with Mexico so they can build more productive economies and emerge from poverty,” wrote Peter Hakim and Carlos Rosales of the Inter-American Dialogue, a Washington-based group that strongly backs U.S. trade deals with Latin America and the Caribbean.<sup>26</sup>
- “The U.S. retail industry has long supported giving CBI countries trade benefits that parallel those provided to Mexico ... [‘NAFTA parity’] would promote broader, deeper development in the CBI by encouraging not only apparel production and assembly, but also the development of a textile industry to supply that apparel production,” said Erik Autor of the U.S. National Retail Federation, a major proponent of measures which lower duties on U.S. imports.<sup>27</sup>

As a result of intensive lobbying by the retail industry and other interests, CBI was expanded to include so-called “NAFTA parity” for textile and apparel exports from CBI countries, granted that they meet CBTPA’s rules of origin, which generally require the use of U.S. or regional inputs.<sup>28</sup> The original idea was that CBTPA would serve as a bridge to provide NAFTA parity while a Free Trade Area of the Americas (FTAA) was negotiated. However, with FTAA talks indefinitely stalled, major U.S. retail importers and key policy-makers expect that CBTPA will be extended past its original 2008 deadline.

CBTPA’s procedural requirements are similar to those in the underlying CBI legislation. But there are some additional substantive eligibility criteria that CBI countries must meet to obtain CBTPA benefits, which are related to CBTPA’s original purpose as a bridge of NAFTA parity until an FTAA was implemented.<sup>29</sup> Namely, countries must be meeting their WTO obligations and participating in FTAA or U.S.-FTA negotiations. But that requirement has proven quixotic. In the face of the long-time

derailment of FTAA talks, all CBTPA countries continue to enjoy the benefits regardless of their engagement in FTA talks.

That CBTPA will have to be renewed before the end of 2008 is conventional wisdom in Washington. First, Fast Track has expired, and there is little chance that there will be a new grant of this authority prior to September 2008 due to domestic political considerations and a busy legislative calendar. Secondly, there is no way that an FTAA will be in place by September 2008. As President George W. Bush noted at the most recent Summit of the Americas, “The FTAA has stalled.”<sup>30</sup> Most FTAA negotiators would consider this a dramatic understatement, as anti-FTAA candidates are being elected across Latin America. Representatives from the Mercosur governments, the Organization of American States and Venezuela have all said that FTAA talks are not even possible without a WTO Doha Round of negotiations that ends in the United States dismantling much of its current agricultural policies<sup>31</sup> – an outcome that seems very remote. Thus, so long as there is even one CBTPA country without an FTA by September 2008 – which will certainly be the case – the entire program will have to be renewed.

There is widespread support for renewal of preference programs from both political parties, civil society and the business community, and legislation was recently passed in Congress to renew both GSP and ATPDEA.<sup>32</sup> As noted by *Congress Daily*, “Any effort to allow trade preferences to expire will meet opposition from U.S. retail and importer groups, which benefit greatly from zero duties on imports.”<sup>33</sup> This is the case because Congress’ focus is on the demands of the large retailers – Wal-Mart, K-Mart, and J.C. Penney’s – who provide huge campaign contributions and who are the main beneficiaries of these programs. While the administration and some individual congressmembers use threats about preference programs as blunt instruments to force countries to comply with other U.S. policy goals, Congress’ focus is retail, not principle.

#### **4. Even if CBTPA were to expire, it would affect only a tiny fraction of Costa Rica’s exports to the U.S. market.**

In addition to the legal and political reasons to be skeptical of preference program expiration, there are economic reasons why even the highly unlikely scenario of CBTPA expiration would not represent major economic damage to Costa Rica, for the simple reason that most of Costa Rica’s exports are duty-free under programs other than CBTPA.

Over the 2001-2006 period (the period since CBTPA has been in operation), Costa Rica exported \$21,334,065,062 in goods to the U.S. market, representing goods in 3,142 eight-digit Harmonized Tariff System tariff lines. Costa Rica’s most important exports to the U.S. market are duty-free under WTO rules, or the permanent parts of CBI, and are listed in Table 1.

**Table 1**

<b>Total 2001-06 U.S. Exports</b>	<b>Description</b>
\$2,418,321,321	Medical supplies
\$2,237,561,127	Integrated Circuits
\$1,681,274,914	Bananas, fresh or dried
\$1,053,965,650	Pineapples, fresh or dried
\$1,042,566,017	Machine parts
\$723,681,005	Coffee, not roasted

*Source: U.S. International Trade Commission*

Table 2 shows that the overwhelming majority (over 90 percent) of Costa Rica's exports are duty-free under WTO rules, the permanent parts of CBI, or the ever-popular GSP. Only around 10 percent of exports are CBTPA dependent or not duty-free under any circumstances.<sup>†</sup>

**Table 2**

	<b># of Tariff Lines</b>	<b>Dollar Value</b>	<b>% of total exports</b>
<b>Duty-Free Exports</b>			
<i>Under WTO</i>	1,165	\$11,641,594,722	55%
<i>Under CBI</i>	1,512	\$6,739,848,335	32%
<i>Under only GSP</i>	361	\$921,411,090	4%
		<b><i>Rough share of exports that is non- CBTPA dependent and duty-free</i></b>	<b>91%</b>
<i>Under Only CBTPA</i>	57	\$68,000,719	<1%
<i>Under CBTPA Rules of Origin</i>		\$1,560,079,634	7%
<b>Pays a tariff under any circumstance</b>		\$827,772,859	Under 4%
<b>Total Exports</b>	3,142	\$21,334,065,062	100%

*Source: U.S. International Trade Commission; authors' calculations based on Harmonized Tariff System tariff lines at the HTS-8 level of aggregation*

<sup>†</sup> Note that the numbers may not add up exactly to 100 percent because of some overlap between the categories and miscategorization by Costa Rican exporters of their goods. Also note that, within CBTPA trade, most of it is "rules of origin" trade, meaning that the goods can only receive duty-free access if they refuse to use cheaper third country fabrics. Many Costa Rican producers find it cheaper to use third country fabrics and pay a higher tariff, so the number in that row probably overstates the importance of CBTPA.

## **Conclusion: Costa Rica's market access is safe**

The deceitful bullying tactic of threatening CBI removal is being used because the NAFTA model on which CAFTA is based has fallen into severe disrepute based on its actual outcomes over the past 13 years, especially in Mexico where real manufacturing sector wages have fallen,<sup>34</sup> income growth has stagnated,<sup>35</sup> 1.3 million *campesinos* have lost their livelihoods,<sup>36</sup> 28,000 small- to medium-sized businesses have gone out of business,<sup>37</sup> and manufacturing employment has fallen as factories relocate to China.

While the majority of the U.S. population has a negative view of NAFTA, several powerful special interests in the energy, pharmaceutical, agribusiness and other corporate sectors, and their friends in the Bush administration, seek to expand this model despite its proven damage to most people in the affected countries. Having lost the debate on the merits, they have turned to various bullying tactics overseas, to near-bribery levels of deal-making at home, and distractions (CAFTA as a “counter-terrorist measure”) to try to get their way. The false threats circulating about CBI termination are squarely within that dishonorable and dishonest tradition.

As shown here, the underlying CBI is permanent, and would require an act of Congress to revoke, which will not happen. CBTPA, which requires an act of Congress to extend, will almost certainly be renewed, given the reliance of powerful U.S. retail interests on the program.

**APPENDIX**

**Congress of the United States**

Washington, DC 20510

September 28, 2007

His Excellency F. Tomás Dueñas  
The Ambassador of Costa Rica  
Embassy of Costa Rica  
2114 S Street, NW  
Washington, D.C. 20008

Dear Mr. Ambassador:

The people of the United States appreciate that Costa Rica is the oldest democracy in Latin America, and are proud of the warm and close relationship that our two countries have always had. The United States wants to maintain that very special relationship that has existed for so many years.

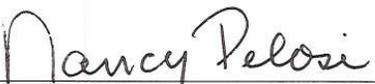
The United States supports the democratic processes that take place in free countries like Costa Rica. The decision as to whether or not Costa Rica joins CAFTA and votes yes or no on their referendum on October 7 is the decision of the people of Costa Rica. A key aspect of democracies is that they respect the electoral outcomes reached by other democracies.

We understand that it has been asserted by some that there is a link between the referendum vote and Costa Rica's continued participation in the Caribbean Basin Initiative (CBI). We are not aware of any connection between the two. Participation in CBI is not conditioned on a country's decision to approve or reject a free trade agreement with the United States, and we do not support such a linkage.

Sincerely,



Harry Reid  
U.S. Senate Majority Leader

  
Nancy Pelosi  
Speaker of the U.S. House of Representatives

MEMBER:  
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The Honorable Condoleezza Rice  
Secretary  
Department of State  
2201 C Street NW  
Washington, DC 20520

Re: Ambassador to Costa Rica Mark Langdale

Dear Secretary Rice:

It has come to my attention that a formal denunciation was filed last month in Costa Rica's Supreme Elections Tribunal (TSE) against U.S. Ambassador to Costa Rica Mark Langdale.

It is my understanding that the denunciation accused Ambassador Langdale of intervening in Costa Rica's internal political affairs by publicly advocating a "yes" vote in the country's historic popular referendum, scheduled for October 7, on whether to ratify the Central America Free Trade Agreement (CAFTA). There are also press reports indicating that Ambassador Langdale has used the threat of disappearance of U.S. trade preferences or worsening of U.S. commercial and/or foreign relations during his advocacy for CAFTA, including after the referendum campaign season was under way.

U.S. trade preferences for Costa Rica under the Caribbean Basin Initiative were made permanent in 1990 by the Customs and Trade Act of 1990. Additional preferences for Costa Rica under the Caribbean Basin Trade Promotion Act (CBTPA) of 2000 have been widely supported by both parties and chambers in Congress, as well as Democratic and Republican presidents. Moreover, most of Costa Rica's exports are duty-free under the World Trade Organization's most-favored nation terms. It is Congress—not the executive branch—that can amend these preference programs. It would be highly misleading at best for the executive branch to suggest that Costa Rica's trade preferences will disappear, when such decisions are constitutionally in the hands of Congress.

But more urgently, as noted in the denunciation, such advocacy by foreign persons would be in violation of the Costa Rican constitution and law on referenda. It would also be at odds with U.S. obligations under the Vienna Convention on Diplomatic Relations, to which both the United States and Costa Rica are party. And as you know, foreign intervention is prohibited in referenda in the United States.

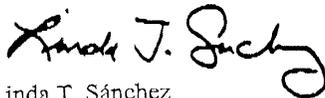
In a September 10 letter written by the U.S. Embassy to a Costa Rican legislator, the U.S. Embassy argues that because the United States is party to CAFTA, the Embassy "may highlight the benefits of this trade treaty for Costa Rica" without that qualifying as foreign intervention.

I do not share this interpretation, nor is it consistent with the national and international legal norms referred to in this letter. From the moment on April 23, 2007 when Costa Rica's legislature determined that CAFTA would be put to a referendum, CAFTA became the subject of an ongoing electoral process in that country, and our embassy personnel should have refrained from pressuring or advocating in favor of a particular outcome of the vote. It would appear that Ambassador Langdale's documented public remarks violate the spirit, if not the letter, of U.S. international diplomatic obligations, let alone U.S. foreign policy.

Even the perception of such interference harms the U.S. image in a region already suspicious of our intentions. If we are to be seen as respecting democracy, sovereignty, and economic development, we must not interfere in any way with the historic popular referendum on CAFTA in Costa Rica, the region's oldest and strongest democracy.

Given that there is less than a week left of campaigning prior to the referendum, I request your immediate assurances that no embassy staff time or resources are being spent trying to influence in any way the outcome of the referendum. Following such assurances, I request a full investigation into whether such efforts have been made in the past.

Sincerely,



Linda T. Sánchez  
Member of Congress

## ENDNOTES

- <sup>1</sup> Letter from Senate Majority Leader Harry Reid (D-Nev.) and Speaker Nancy Pelosi (D-Calif.) to Ambassador Tomas Dueñas, dated September 28, 2007; Letter from Rep. Linda Sánchez (D-Calif.) to Secretary Condoleezza Rice, dated September 28, 2007.
- <sup>2</sup> Michael Cornell Dypski, “The Caribbean Basin Initiative: An Examination of Structural Dependency, Good Neighbor Relations, and American Investment,” *Journal of Transnational Law & Policy*, Vol. 12:1, Fall 2002, at 101. Unless otherwise noted, CBI henceforth refers to the underlying CBERA benefits, while CBTPA refers to the expanded CBI benefits.
- <sup>3</sup> Nancy Dunne, “Caribbean moves closer to U.S. trade fold,” *Financial Times*, Aug. 16, 1990.
- <sup>4</sup> Dory Owens, “Caribbean Basin bill passes,” *Miami Herald*, Aug. 5, 1990.
- <sup>5</sup> “Make CBI Permanent,” *Miami Herald*, June 22, 1990.
- <sup>6</sup> Quoted in Rep. Charles B. Rangel (D-N.Y.), “Rep. Rangel Reacts to Reported ‘Threat’ from Administration Official to CAFTA Countries,” Congressional Press Release, March 22, 2005.
- <sup>7</sup> “Estados Unidos espera que Costa Rica se una pronto al CAFTA,” *AP Spanish*, Nov. 9, 2005; “EEUU dice reputación Costa Rica se verá afectada si rechaza TLC,” *EFE*, Dec. 23, 2005.
- <sup>8</sup> “Embajador de EEUU insiste en necesidad de aprobar TLC,” *Deutsche Presse-Agentur*, March 15, 2007.
- <sup>9</sup> “Embajador EEUU: Costa Rica ‘pierde el tren del libre comercio,’” *Deutsche Presse-Agentur*, March 15, 2007.
- <sup>10</sup> “Costa Rican Court Rules CAFTA Is Constitutional; Oct. 7 Referendum Set,” *Inside U.S. Trade*, July 13, 2007.
- <sup>11</sup> María Siu Lanzas, “Embajador de Estados Unidos promueve TLC en empresas,” *Prensa Libre*, Aug. 9, 2007; at <http://www.prensalibre.co.cr/2007/agosto/09/economia05.php>.
- <sup>12</sup> Customs and Trade Act of 1990, Pub. L. no. 98-67, Title II (“Caribbean Basin Economic Recovery Expansion Act of 1990”), Sec. 211.
- <sup>13</sup> Rep. Charles B. Rangel, “Rep. Rangel Reacts to Reported ‘Threat’ from Administration Official to CAFTA Countries,” Congressional Press Release, March 22, 2005.
- <sup>14</sup> Office of the Americas, “Sixth Report to Congress on the Operation of the Caribbean Basin Economic Recovery Act,” Office of the U.S. Trade Representative, Dec. 31, 2005, at 4-5.
- <sup>15</sup> Reps. Charles B. Rangel (D-N.Y.) and Jim McCrery (R-La.), “House passes Andean trade preferences,” Press Release, June 27, 2007.; “House passes ATPDEA extension with overwhelming majority,” *Inside U.S. Trade*, June 27, 2007; “Extending the Authorities of the Andean Trade Preference Act,” Congressional Record, June 28, 2007, at S8724; Sean McCormack, “Extension of the Andean Trade Preference Act,” Press Statement by the Department of State, July 2, 2007.
- <sup>16</sup> 19 U.S.C. § 2702 (e)(1)(a).
- <sup>17</sup> There are also several “discretionary” factors that can be taken into account when considering country designation for CBERA. These include the desire to be designated, limitations on export subsidies and other considerations. See Office of the Americas, “Sixth Report to Congress on the Operation of the Caribbean Basin Economic Recovery Act,” Office of the U.S. Trade Representative, Dec. 31, 2005, at 16-17.
- <sup>18</sup> The clauses regarding the extradition and trade concessions to other developed countries cannot be waived. For the exact language, see 19 U.S.C. § 2702 (b). While several Caricom members are members of the International Criminal Court (ICC) – which the Bush administration maintains could be used by other countries to seek extradition of U.S. citizens – it seems that only Barbados, Saint Vincent & the Grenadines, and Trinidad & Tobago have *not come* to some sort of agreement with the Bush administration to grant a waiver from seeking extradition of U.S. citizens under the ICC. These countries have been cut off from receiving certain types of U.S. aid, but it is unclear whether there is any effort underway to revoke their CBI benefits. See ICC website, Coalition for the ICC website, Center for International Policy website, accessed May 5, 2006.
- <sup>19</sup> In 1992, the Motion Picture Association petitioned under the GSP program to have Honduras’ GSP and CBI benefits removed. In April 1998, the USTR suspended duty-free treatment for certain Honduran exports to the U.S. market under GSP and CBI benefits for about three months, based on an investigation that determined that Honduras was not protecting U.S. intellectual property rights. Duty-free treatment for these articles was restored in June 1998. See “Termination of Action: Honduran Protection of Intellectual Property Rights,” 63 Fed. Reg. 35633, June 30, 1998.
- <sup>20</sup> GSP’s petition process is laid out by regulation in 15 C.F.R. Pt. 2007 (Regulations Of The U.S. Trade Representative Pertaining To Eligibility Of Articles And Countries For The Generalized System Of Preference Program).
- <sup>21</sup> Depending on the type of relief requested, the U.S. International Trade Commission may have to conduct certain investigations. See 19 U.S.C. § 2703 (e).
- <sup>22</sup> 19 U.S.C. § 2251(a), (Trade Act of 1974).
- <sup>23</sup> “AD and CVD Duty Orders in Effect,” “Antidumping and Countervailing Duty Investigations: Jan 01, 2000 to Current,” and 1980-2000 summary statistics, U.S. Department of Commerce’s Import Administration’s Electronic Subsidies Enforcement Library, Antidumping and Countervailing Duty Statistics, accessed Sept. 24, 2007.
- <sup>24</sup> John Yearwood, “Caribbean Apparel Makers Fear NAFTA Will Stifle Boom,” *Dallas Morning News*, July 20, 1993; Juanita Darling, “That Humming Sound,” *Los Angeles Times*, Dec. 1, 1996; Larry Rohter, “Blows from NAFTA Batter the Caribbean Economy,” *New York Times*, Jan. 30, 1997.
- <sup>25</sup> Shelley Emling, “Caribbean Leaders Hope to Make Points with President Clinton When He Visits the Area This Spring,” *Atlanta Journal and Constitution*, Feb. 21, 1997.
- <sup>26</sup> Peter Hakim and Carlos A. Rosales, “A Bid to Make Good on a Promise,” *Los Angeles Times*, May 8, 1997.
- <sup>27</sup> Erik O. Autor, Vice President, International Trade Counsel, National Retail Federation, Testimony Before the Subcommittee on Trade of the House Ways and Means Committee, March 23, 1999.

<sup>28</sup> “With regard to *textile articles*, the enacted version has provided duty- and quota-free treatment as follows: (1) Apparel assembled in a CBTPA beneficiary country from fabric made in the United States from U.S.-made yarn, and cut in the United States; or from fabric made in the United States from U.S.-made yarn, cut in the CBTPA country, and sewn together in a CBTPA country with U.S.-made thread. (2) Apparel articles (except socks) knit-to-shape from U.S.-made yarn in a beneficiary country, or articles (other than non-underwear T-shirts) assembled from fabric knit in the United States or in a beneficiary country from U.S.-made yarn, and cut in a beneficiary country. Duty-free treatment of knit-to-shape articles applies to 250 million square meters equivalent (SME) for the year beginning October 1, 2000, with 16% annual increases through September 30, 2004, and, after that, through September 30, 2008, at the level for 2004, or in quantities set by law. The annual limit for non-underwear T-shirts has been set at 4.2 million dozen for the year beginning October 1, 2000, with 16% annual increases through September 30, 2004, and after that at the latter level, or in quantities set by law. (3) Brassieres cut and assembled in the United States and/or one or more beneficiary countries during the six-year period beginning with October 1, 2001, if the cost of the U.S.-made fabric components used in their manufacture by their individual producer during the preceding year is at least 75% of their customs value; if the U.S.-component requirement is not met in any year, the producer will not be eligible for the preference until the year following the year in which the value of U.S.-made fabric components is at least 85% of the customs value of the brassieres produced by the individual producer. (4) Apparel articles assembled in a beneficiary country from fibers, fabric, or yarn not formed in the United States or a beneficiary country, that are not widely available in commercial quantities (as described in Annex 401 of the NAFTA). The President is authorized to proclaim, upon request and under specified procedure, this preference for other fibers, fabric, or yarn. (5) Certified handloomed, handmade, and folklore articles. (6) Preferential treatment is not denied to articles containing limited quantities of foreign-origin findings or interlinings, or *de minimis* quantities of fibers or yarns of non-U.S. or non-CBTPA origin, or nylon filament yarn made in a country with which the United States has a pre-January 1, 1995 free-trade agreement (Canada, Mexico, and Israel). (7) Textile luggage assembled in a CBTPA beneficiary country from fabric made in the United States from U.S.-made yarn, and cut in the United States; or from fabric made in the United States from U.S.-made yarn, and cut in a CBTPA country.” For a detailed summary of “NAFTA parity,” see Vladimir N. Pregelj, “Caribbean Basin Interim Trade Program: CBI/NAFTA Parity,” Congressional Research Service Brief IB95050, Jan. 12, 2005.

<sup>29</sup> “It is the policy of the United States – (1) to offer Caribbean Basin beneficiary countries willing to prepare to become a party to the FTAA or another free trade agreement, tariff treatment essentially equivalent to that accorded to products of NAFTA countries for certain products not currently eligible for duty-free treatment under the CBERA; and (2) to seek the participation of Caribbean Basin beneficiary countries in the FTAA or another free trade agreement at the earliest possible date, with the goal of achieving full participation in such agreement not later than 2005.”<sup>29</sup> This law further specifies that transition period for CBTPA is “the period that begins on October 1, 2000, and ends on the earlier of – (i) September 30, 2008; or (ii) the date on which the FTAA or another free trade agreement that makes substantial progress in achieving the negotiating objectives set forth in 108(b)(5) of Public Law 103-182 (19 U.S.C. 3317(b)(5)) [This refers to the trade negotiating objective laid out in NAFTA, which include national treatment for U.S. goods and a host of other provisions] enters into force with respect to the United States and the CBTPA beneficiary country.” See Trade and Development Act of 2000, Pub. L. no. 106-200, Title II, Sec. 211 (bb)(5)(D). CBTPA countries must provide intellectual property protection greater or equal to the country’s obligations under the WTO’s Agreement on Trade-Related Aspects of Intellectual Property Rights, as well as have government procurement policies that are “equivalent” to the WTO’s Agreement on Government Procurement. They must provide internationally-recognized worker rights, including the right of collective bargaining. The country must also have implemented its “commitments to eliminate the worst forms of child labor;” met U.S. counter-narcotics certification criteria; and be taking steps to become party to and implement obligations under the Inter-American Convention Against Corruption. See 19 U.S.C. § 2703 (b)(5)(B) for full details.

<sup>30</sup> Steve Holland, “Bush says Latam free-trade idea stalled for now,” *Reuters*, Nov. 2, 2005.

<sup>31</sup> Rossella Brevetti, “Future of FTAA Turns on Unblocking Doha Agriculture Talks, OAS Head Says,” *BNA Report for Executives*, Nov. 17, 2005; “FTAA Likely Stalled Through 2006 After Contentious Talks In Argentina,” *Inside U.S. Trade*, Nov. 11, 2005.

<sup>32</sup> Rep. Charles Rangel (D-N.Y.), “Rangel Bill Would Extend Trade Benefits for Developing Countries,” Congressional Press Release, March 30, 2006; “Oxfam Welcomes New Trade Legislation,” Oxfam America Press Release, March 30, 2006; “U.S. Retailers, Importers Push For GSP Renewal Despite Opposition,” *Inside U.S. Trade*, May 5, 2006; <http://clerk.house.gov/evs/2007/roll583.xml>.

<sup>33</sup> Martin Vaughan, “Grassley, Others May Delay Action On Trade Preferences,” *Congress Daily PM*, Jan. 23, 2006.

<sup>34</sup> Carlos Salas, “Highlights of Current Labor Market Conditions in Mexico,” Global Policy Network Country Brief, April 2003.

<sup>35</sup> Mark Weisbrot, David Rosnick, and Dean Baker, “Getting Mexico to Grow With NAFTA: The World Bank’s Analysis,” Center for Economic and Policy Research Issue Brief, Oct. 13, 2004.

<sup>36</sup> John Audley, Sandra Polaski, Demetrios G. Papademetriou, and Scott Vaughan, “NAFTA’s Promise and Reality: Lessons from Mexico for the Hemisphere,” Carnegie Endowment for International Peace Report, Nov. 19, 2003.

<sup>37</sup> Jose María Imaz, “NAFTA Damages Small Businesses,” *El Barzón* (Mexico City), January 1997.