

Outer Temple  
Chambers

Panama City

## **The Central America - EU Association Agreement**

John McKendrick

Barrister

January 2013

## About the Agreement

“Agreement Establishing An Association Between Central America, on the One Hand, and the European Union and Its Members State on the Other”

- Central America (population: 43 million; GDP \$ 148 bn)
- European Union (population: 500 million; GDP \$ 18 trillion )
- Colombia (population: 48 million; GDP \$335 bn)

## About the Agreement

- The agreement has three “pillars”
  - cooperation;
  - politics;
  - trade.
- Trade is the main focus. Bilateral trade in goods between Central America and the EU was Euro 8 billion in 2011 (compared with Euro 21 for Colombia/Peru).
- EU – Central America trade only 1.8 % of EU extra-regional exports.

## About the Agreement

- What are the trade flows between Central America and the EU?
  - The EU is Central America's second trade partner after the USA – 9.4 % of trade flow.
  - In 2010 EU exports to Central America were:-
    - Costa Rica – 36%
    - Guatemala – 28%
    - El Salvador – 15%
  - In 2010 main exporters to EU were:
    - Costa Rica - 54%
    - Honduras – 22 %
    - Guatemala – 12%

## Predictions for the Agreement

### Overview:-

- Costa Rica gains most.
- Belize is likely to be the biggest ‘loser’ .
- Relatively little impact on Panama is predicted.
- EU – Central America trade will increase.
- Central America will become more integrated as a region.
- Wages will increase.
- Poverty will decrease.
- Civil society will be significantly boosted.
- Boost renewable energies and sustainable development.
- Migration to Costa Rica and Panama from the other countries.

## Predictions for the Agreement

The Agreement, however, is unlikely to:

- Significantly increase share of Central American merchandise trade with Europe.
- CAFTA-DR will remain much more dominant.
- Despite its detailed political ‘articles’ it is unlikely to strengthen political connections between the two regions.
- With the exception of Costa Rica, GDP rates will see little growth.

## Predictions for Agreement

*Trade Sustainability Impact Assessment of the Association  
Agreement to be Negotiated between the EU and Central  
America (September 2009)*

Increases in national income (GDP) (in the short; and long run):

Costa Rica – 1.6%; 3.5%

Nicaragua – 0.8%; 0.5%

Guatemala – 0.2%; 0.6 %

El Salvador – 0.7%; 1.6 %

Honduras – 1.0%; 2.2 %

Panama - 1.9%; 1.3 %



## Predictions for the Agreement

### Sector Performances:-

- Vegetables fruits and nuts + 10 % (in Costa Rica and increase of 20 to 23%).
- Bananas up by 1.5 % in Costa Rica.
- Electronics – CR will benefit by increased output, employment and trade.
- Beverages and process foods.
- Textiles and clothing will decrease in CR and Panama

## Trade: Structure

Articles 77 to 363. Divided into 14 Titles, which are:

1. Initial provisions.
2. Trade in goods (sub-divided into 6 chapters)
  - a. national treatment and market access for goods;
  - b. trade remedies;
  - c. customs and trade facilitation;
  - d. technical barriers to trade;
  - e. sanitary and phytosanitary measures;
  - f. exceptions.

## Trade: Structure

3. Establishment, Trade in Services and Electronic Commerce
  - a. general provisions;
  - b. establishment;
  - c. cross border supply of services;
  - d. temporary presence of natural persons for business purposes;
  - e. regulatory framework (section A – general application; Section B – computer services; section C – courier services; section D – telecommunications services; section E – financial services; section F – maritime transport services;
  - f. electronic commerce;
  - g. exceptions

## Trade: Structure

4. Current Payments and Capital Movements.
5. Government procurement.
6. Intellectual Property (with several sub chapters).
7. Trade and competition.
8. Trade and Sustainable Development.
9. Regional Economic Integration.
10. Dispute Settlement (with several sub chapters).
11. Mediation Mechanism for Non-Tariff Measures.
12. Transparency of Administrative procedures.
13. Specific Tasks in Trade Matters of the Bodies Established under this Agreement.
14. Exceptions.

## GATT

The 'trade pillar' creates a 'free trade area' between CA and EU

The FTA is based upon Article 24 of the General Agreement on Tariffs and Trade 1994 (GATT) and Article 5 of General Agreement on Trade in Services (GATS)

Article 85 of the Agreement also incorporates Article III of GATT: the 'National Treatment Principle'

Heavily based on the World Trade Agreement (Article 77).

## GATT

### Article 24 GATT:-

Two conditions to a free trade area under the WTO, the purpose of a FTA is to encourage trade between territories and not to raise barriers to other areas.

1. the 'internal requirement' – duties between the 'territories' (the EU and CA) must be eliminated with 'substantially all trade' .

2. the 'external requirement' - duties and other restrictions on trade should not be higher after the creation of the FTA than before.

## GATT

The National Treatment Principle of GATT (Article III)  
incorporated by way of Article 85 of the Agreement:

This requires that parties to GATT (and hence the countries of the EU and CA) ensure that once border duties have been paid by foreign exporters, no additional burdens may be imposed through internal taxes or regulations, and so on, on foreign exporters where domestic producers of the like product not bear the same burden.

## Customs Tariffs

Article 83 : elimination of customs duties – details are set out in the Annexes to Schedule 1.

- EU liberalise 91 % tariff lines on entry into force of Agreement.
- CA liberalise 48 % on entry into force and complete liberalisation over 10 years.
- CA liberalise 69 % industrial and fishery products – on entry into force of Agreement.
- Only 1 % of trade will require liberalisation after 15 years.



## Agricultural Tariffs

### CA gains in relation to agriculture are:

- Consolidation and permanent duty free access for all products in the GSP+ scheme.
- Access beyond GSP+ for some products, e.g. shrimp; bottled rum; cheese; yucca.
- Duty free quotas for certain products, with annual growth – sugar, beef, rice.
- Flexible rules of origin for products such as tuna.
- Significant reduction in tariffs for bananas: EU will cut tariff to 75 euro per tonne by 1.1.20.

## Anti-Dumping

Article 93 sets out that trade remedies will be used in compliance with WTO requirements.

- Parties will ensure their domestic anti-dumping legislation and countervailing measures are compatible with WTO legislation.
- Article VI of GATT permits parties to introduce anti-dumping measures to address cases where the products of one country are introduced into another country at less than the normal value and this threatens material injury or retards the establishment of a domestic industry producing like products.

## Technical Barriers to Trade

Article 125 of the Agreement applies and gives effect to the WTO ‘Agreement on Technical Barriers To Trade’:-

- prohibition of discrimination – imported products must not be treated less favourably;
- technical regulations must not be more trade restrictive than necessary;
- parties should use relevant international technical standards;
- parties should adopt foreign technical standards if seek to achieve same objectives as their own;
- apply the TBT Code of Practice.

## Sanitary and Phytosanitary Measures

Article 141 and 145 of the Agreement apply aspects of the WTO SPS Agreement:-

- measures only applied to the extent necessary to protect human, animal or plant life or health and based upon scientific principles and evidence;
- measures must not be arbitrary;
- measures must not be more restrictive of trade than is necessary to achieve an appropriate level of SPS protection;
- Measures which conform to international standards are presumed to be consistent with Agreement and higher standards only permitted if scientifically justified.

However the Agreement goes further than WTO.

## Services

Major attempt to liberalise services in the free trade area.

- Parties are to afford to service providers treatment no less favourable than that accorded to national service providers (subject to exceptions).
- Articles 173 and 174 permits “key” personnel to live and work and visit and work for set periods of time.
- Parties can apply regulatory and professional experience standards in the territory where service supplied.
- Specific provisions set out for licensing certain service providers.
- Toughens up regulatory bodies for telecommunications.
- More effective and transparent regulation of financial services.

## Government Procurement

Governments procure (put out to tender) vast contracts. It is important the procurement system is transparent and fair.

- Procurement does not extend to goods/services for commercial sale; employment; acquisition of land and others.
- Panama and Costa Rica are opening their procurement markets more than the others.
- Non discrimination applied to procuring entities they must treat non national service/goods providers as favourably as national ones (Article 211).
- Local affiliates cannot be treated less favourably if have foreign affiliation or ownership.
- Must be publication of procurements information (tenders).
- Conditions on participation must be used as barriers to trade.
- Cannot procure with someone found to have engaged in fraud/illegality.

## Intellectual Property

Parties to ensure effective implementation of the WTO Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS Agreement) the cornerstone of which is:

- Treatment no less favourable than that accorded to a country's own nationals with regard to protection of intellectual property; and
- Affording to non national any favours privileges etc. granted to nationals with regard to intellectual property protection.
- Applies Berne and Rome Conventions on music/literacy works.
- Parties use reasonable efforts to ratify Madrid Agreement on Trademarks.
- Shall protect 'geographical indications' (*Scotch, Champagne*).
- Effective judicial, civil and criminal, remedies and penalties.

## Regional Economic Integration

- Enhanced customs procedures and within 2-3 years (for CA) administrative document for import/export declarations – there should be a single import duty and single administrative document for the region.
- Within 5 years, CA agrees to regional technical regulations and conformity assessment – permit harmonisation.
- For CA relaxed SPS procedures for circulation of animals, animal products, plants etc.
- CA to be subject to regular progress checks on implementation of the above.



## Trade: Dispute Settlement

- Informal procedure exists – formal “consultation”.
- Panel procedure (3 people) – will give a ruling within 120 days.
- Panelists drawn from 36: 12 from EU; 12 from CA and 12 who are not nationals of either grouping. Shall have experience in international trade law.
- Does not exclude WTO dispute resolution process – party can choose.
- Separate mediation process exists for non tariff measure disputes.

Further Assistance.

Please contact:-

John McKendrick

- [John.mckendrick@outertemple.com](mailto:John.mckendrick@outertemple.com) , or
- 00 44 (0) 207 353 6381

Steve Graham, Commercial Director

- [steve.graham@outertemple.com](mailto:steve.graham@outertemple.com)
- 00 44 (0) 207 353 6381