Trade Facts

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CAFTA-DR DOES NOT AFFECT U.S. IMMIGRATION LAWS

THE TRUTH ABOUT CAFTA-DR: The CAFTA-DR does not cover and will not require any change in U.S. immigration laws, practices, or visas. Congressional prerogatives in the area of immigration are fully preserved.

Allegation: CAFTA-DR sets up a right for Mode 4 temporary entry but does not provide for visas to exercise this right. Therefore, CAFTA-DR creates a major conflict of obligations that would be resolved by an international CAFTA-DR tribunal.

Fact: CAFTA-DR does not "set up a right for Mode 4 temporary entry." Mode 4 and temporary entry are not the same thing. "Mode 4" describes services, like musical performances, that are provided by foreign nationals within the United States. Nothing in the CAFTA-DR, however, gives these persons a "right" to enter the United States or places any obligation on the United States to grant visas to such persons.

USTR is acutely aware of Congressional sensitivities with respect to the inclusion of temporary entry provisions in trade agreements. The Administration consequently did not include those provisions in the CAFTA-DR. In fact, none of the free trade agreements (FTAs) negotiated since the Chile and Singapore FTAs contain any provisions pertaining to temporary entry.

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Allegation: CAFTA-DR creates a major conflict of obligations that would be resolved by an international CAFTA-DR tribunal. The CAFTA-DR 'side letter' of August 5, 2004, signed by the CAFTA-DR nations ("Understanding on Immigration Measures") and which states that CAFTA-DR creates no new obligations regarding nations' immigration laws, is inadequate to resolve this conflict.

Fact: There is no conflict. As noted, the Administration specifically excluded temporary entry provisions from the CAFTA-DR. The Understanding on Immigration Measures, signed by all seven CAFTA-DR parties, was intended to further allay concerns that the CAFTA-DR imposes obligations on any aspect of immigration, including temporary entry.

Allegation: The Understanding was not part of the CAFTA-DR legal text signed in May 2004, and its legal status is inferior to that of the conflicting provisions in the actual agreement.

Fact: The Understanding does not have an inferior legal status. Under international law, the Understanding is a binding international agreement just like CAFTA-DR, and dispute settlement panels are required to take it into account when interpreting CAFTA-DR.

Allegation: There is no requirement that this letter even be included in the text submitted to CAFTA-DR countries' congresses for approval.

Fact: Congressional approval by the CAFTA-DR countries is not necessary for the agreement to be legally binding. Nor would Congressional approval by the CAFTA-DR countries make it any more binding. The Understanding is as binding as the CAFTA-DR itself.

Allegation: A similar NAFTA side letter on sugar was not included in Mexico's NAFTA approval and has since been subject to eleven years of unsuccessful trade tribunal litigation.

Fact: The 1993 exchange of letters on sugar created a binding international agreement that is still in force. But that exchange is a false analogy. The NAFTA side letter on sugar made a major change in one of the most controversial provisions of the NAFTA many months after the NAFTA was signed. The CAFTA-DR side letter was signed at the same time as the CAFTA-DR itself and thus reflects a contemporaneous, shared understanding on how the agreement will be interpreted on a subject on which there was complete agreement during the negotiations.