Agreement
Establishing a Secretariat for Environmental Matters Under the Dominican Republic – Central America – United States Free Trade Agreement

The Governments of the parties to the Dominican Republic – Central America – United States Free Trade Agreement (the "CAFTA-DR") (the "Parties"):

COMMITTED TO implementing Articles 17.7 (Submissions on Enforcement Matters) and 17.8 (Factual Records and Related Cooperation) of the CAFTA-DR;

RECALLING their Understanding Regarding the Establishment of a Secretariat For Environmental Matters Under the Dominican Republic – Central America – United States Free Trade Agreement of February 18, 2005 (the "Understanding"), which provides for the Parties to request the Secretariat for Central American Economic Integration ("SIECA") to establish a new unit within SIECA to serve as a Secretariat to receive public submissions and prepare factual records on environmental enforcement as provided in Articles 17.7 and 17.8 of the CAFTA-DR;

NOTING that on February 10, 2006, the Parties requested SIECA to establish a new unit within SIECA to serve as the Secretariat and to house and provide facilities and administrative support for the Secretariat ("February 10th letter");

NOTING FURTHER that on May 22, 2006, SIECA agreed to that request ("May 22nd letter");

SEEKING to institute the Secretariat and provide for its operation; and

ANTICIPATING that they will conclude a memorandum of understanding with SIECA establishing the details of the arrangements for SIECA to serve as the Secretariat and to house and provide facilities and administrative support for the Secretariat;

HAVE AGREED AS FOLLOWS:

Article 1: Establishment

The Parties hereby establish the Secretariat for Environmental Matters ("Secretariat") and designate it to carry out the functions prescribed for the Secretariat in Articles 17.7 and 17.8 of the CAFTA-DR.

Article 2: Location

The Secretariat shall be located in SIECA's facilities in Guatemala City, Guatemala.

Article 3: Direction and Supervision

1. The Secretariat shall operate as an independent entity within SIECA and under the sole direction and supervision of, and shall report exclusively to, the Environmental Affairs Council ("Council") established under Article 17.5 of the CAFTA-DR. The Secretariat shall not receive or act on instructions from SIECA or any authority other than the Council. The Secretariat may not hold itself out as a representative of the Parties or the Council.

2. The Secretariat may communicate with the Council through any appropriate means, including electronic communications and shall address such communications to each Council member through the contact point that the Party has designated pursuant to Article 17.5.1 of the CAFTA-DR.

Article 4: Staff

1. The Secretariat shall comprise a General Coordinator and Technical Assistant to the General Coordinator ("Technical Assistant") and such number of other professional staff, if any, that the Council may determine to be appropriate based on a reasoned recommendation from the General Coordinator.

2. The General Coordinator, Technical Assistant, and other professional staff shall be nationals of a Party and have relevant experience in environmental law and its enforcement, including regional expertise, and a demonstrated record of good judgment and objectivity.

3. The Council shall appoint the General Coordinator and Technical Assistant. The General Coordinator and Technical Assistant shall each serve a two-year term, unless the Council otherwise decides, and may be reappointed for successive terms. The Council may decide to remove the General Coordinator or Technical Assistant at any time for cause or other appropriate reason.

4. As necessary to maintain the number of professional staff the Council determines under paragraph 1, the General Coordinator shall forward to the Council for consideration the name and curriculum vitae of any person the General Coordinator recommends that the Council appoint to the professional staff. The person shall be deemed to be appointed, unless within 60 days after the General Coordinator provides a name to the Council a member of the Council requests a meeting of the Council to consider the recommendation, in which case the Council shall decide whether to accept or reject the recommendation. Subject to the direction of the Council, the General Coordinator may determine the duties and conditions of service of professional staff. In selecting professional staff, the General Coordinator shall select staff strictly on the basis of efficiency, competence, and integrity and should strive to achieve an equitable balance from among the Parties.

Article 5: Functions

1. The Secretariat shall perform the functions established for the Secretariat under Articles 17.7 and 17.8 of the CAFTA-DR. In particular, the Secretariat shall:

(a) receive and consider public submissions in accordance with paragraphs 1 and 2 of Article 17.7;

(b) request a Party to respond to public submissions and receive the Party's response in accordance with paragraphs 4 and 5 Article 17.7;

(c) inform the Council, in light of any response provided by the Party, whether public submissions warrant developing a factual record, in accordance with paragraph 1 of Article 17.8;

(d) prepare factual records in accordance with paragraphs 2 and 4 through 6 of Article 17.8;

and may take such additional actions as are appropriate to carry out those functions in accordance with this Article.

2. In furtherance of the objectives of this Agreement, the Secretariat shall take such further actions as the Council may direct and may promote public awareness and understanding of the public submission and factual record process by, *inter alia,* publishing guides, explanatory documents, and other pertinent information, unless the Council decides otherwise.

3. When necessary the General Coordinator may engage persons with relevant expertise, in accordance with procedures that the Council shall establish pursuant to paragraph 2(d) of the Understanding, to assist the Secretariat in preparing factual records.

4. The Secretariat shall apply working procedures that the Council establishes for considering public submissions, preparing factual records, engaging environmental experts, preparing reports to the Council, protecting confidential information, or other matters.

Article 6: Reports

1. The Secretariat shall prepare an annual report to the Council. The report shall:

(a) provide a detailed report of the Secretariat's activities and expenses;

(b) summarize the public submissions that the Secretariat has received;

(c) summarize the responses and other relevant information that Parties have provided to the Secretariat;

(d) summarize the views and other relevant information that non-governmental organizations or individuals have provided to the Secretariat;

(e) summarize final factual records that have been made publicly available and identify any environmental experts that the Secretariat has engaged to assist it in preparing factual records; and

(f) include any other information the Council may request.

2. Unless the Council directs otherwise, the General Coordinator shall submit an annual report to the Council on a date the Council specifies and on or before the anniversary of such date in each following year.

3. Subject to Article 9, the Secretariat shall make the report publicly available, unless the Council decides otherwise.

Article 7: Funds and Budget

1. Each Party shall contribute a share of the Secretariat's budget, subject to the availability of appropriated funds in accordance with the Party's legal procedures.[1]

2. If a Party fails to contribute a share of the Secretariat's budget, any Party may refer the matter to the Council for discussion.

3. The General Coordinator shall prepare an annual Secretariat budget and submit it to the Council for approval. The Secretariat shall submit the first such budget on or before a date the Council decides and each succeeding budget on or before the anniversary of that date or other such date as the Council may decide.

Article 8: Transparency

1. The Parties are committed to ensuring that the Secretariat and the public submissions process operate in a transparent manner and in this regard the Council shall establish working procedures for the Secretariat to make publicly available documents and communications referred to in Articles 17.7 and 17.8 of the CAFTA-DR.

2. The Secretariat shall maintain a Secretariat website. The website shall include:

(a) information on how to contact the Secretariat;

(b) information and procedures on filing a public submission;

(c) as appropriate, working procedures referred to in paragraph 1 and Article 5.4 that the Council establishes; and

[1] Recalling the February 10th and May 22nd letters, each Central American Party will carry out this obligation through contributions it provides to SIECA, unless the Parties otherwise agree.

(d) a procedure to submit over the Internet public submissions, Party responses, and views that non-governmental organizations or persons provide to the Secretariat.

Article 9: Confidentiality

The Secretariat shall not furnish to the public or allow public access to any information it may receive:

(a) (i) that its submitter has identified as confidential in accordance with the procedures the Council establishes for protecting confidential information;

(ii) that is not otherwise publicly available; and

(iii) the disclosure of which could reveal:

(1) the submitter's identity and subject the submitter to serious reprisal, or

(2) business or proprietary information; or

(b) the disclosure of which a Party submitting the information has determined would impede law enforcement, compromise personal privacy, or reveal confidential business or proprietary information or governmental decision-making.

Article 10: Official Languages

1. The Secretariat's official languages shall be English and Spanish.

2. The Secretariat shall submit all formal written communications and factual records to the Council in both official languages, unless the Council decides otherwise.

3. The Secretariat shall provide English and Spanish versions of all documents and communications that it makes publicly available, except that the Secretariat may make available voluminous exhibits or other appendices solely in the language in which they were submitted or prepared.

Article 11: Depositary

The original English and Spanish texts of this Agreement shall be deposited with the General Secretariat of the Organization of American States, which shall serve as the Depositary. The Depositary will promptly provide a copy of the original texts to each signatory.

Article 12: Amendments

1. The Parties may agree on any amendment of this Agreement. The Parties shall deposit the original English and Spanish texts of any amendment with the Depositary, which will promptly provide a copy to each Party.

2. When so agreed, and approved in accordance with the applicable legal procedures of each Party, an amendment shall constitute an integral part of this Agreement to take effect on the date on which all Parties have notified the Depositary in writing that they have approved the amendment or on such other date as the Parties may agree.

Article 13: Signature and Entry into Force

1. This Agreement shall enter into force:

   (a) for signatories that, on the date they sign this Agreement, are parties to the CAFTA-DR, 30 days after the date on which a representative of each such signatory has signed this Agreement; and

   (b) for any signatory that, on the date it signs this Agreement, is not a party to the CAFTA-DR, on the date it notifies the Depositary in writing that it has become a Party to the CAFTA-DR.

2. This Agreement shall remain open for signature by parties to the CAFTA-DR until March 1, 2008, or such other date as the Parties may agree and notify to the Depositary.

Article 14: Accession

1. Any country or group of countries that has acceded to the CAFTA-DR may accede to this Agreement subject to such terms and conditions as may be agreed between such country or countries and the Parties.

2. The instrument of accession shall be deposited with the Depositary, which will promptly provide a copy to each Party.

Article 15: Withdrawal

1. A Party that has provided notice of its withdrawal from the CAFTA-DR shall be deemed to have withdrawn from this Agreement on the date its withdrawal from the CAFTA-DR takes effect.

2. If a Party withdraws, this Agreement shall remain in force for the remaining Parties.

Article 16: Authentic Texts

The English and Spanish texts of this Agreement are equally authentic.

IN WITNESS WHEREOF, the undersigned, being duly authorized, have signed this Agreement.

FOR THE GOVERNMENT OF THE DOMINICAN REPUBLIC:

Secretariat of State for Industry and Trade
__3rd__ day of __October__ 2006

Secretariat of State for Environment and Natural Resources
____ day of _____ 2006

FOR THE GOVERNMENT OF THE REPUBLIC OF EL SALVADOR:

Ministry of Economy
__27__ day of __July__ 2006

Ministry of Environment and Natural Resources
____ day of _____ 2006

FOR THE GOVERNMENT OF THE REPUBLIC OF GUATEMALA:

Ministry of Economy
____ day of _____ 2006

Ministry of Environment and Natural Resources
____ day of _____ 2006

FOR THE GOVERNMENT OF THE REPUBLIC OF HONDURAS:

Secretariat of Industry and Trade
____ day of _____ 2006

Secretariat of Natural Resources and Environment
____ day of _____ 2006

FOR THE GOVERNMENT OF THE REPUBLIC OF NICARAGUA:

Ministry of Development, Industry and Trade
____ day of _____ 2006

Ministry of Environment and Natural Resources
____ day of _____ 2006

FOR THE GOVERNMENT OF THE UNITED STATES OF AMERICA:

Office of the United States Trade Representative
27 day of July 2006

United States Department of State
27th day of July 2006