



- ADMIRALTY & MARITIME
- ANTITRUST & TRADE REGULATION
- APPELLATE LITIGATION
- AVIATION
- BANKING
- BANKRUPTCY, RESTRUCTURING & CREDITORS-DEBTORS RIGHTS
- BUSINESS & COMMERCIAL LITIGATION
- CLASS ACTION DEFENSE
- COMMERCIAL LENDING & FINANCE
- CONSTRUCTION
- CORPORATE & SECURITIES
- EMPLOYEE BENEFITS, ERISA, & EXECUTIVE COMPENSATION
- ENERGY
- ENVIRONMENTAL & TOXIC TORTS
- GAMING
- GOVERNMENT RELATIONS
- HEALTH CARE
- INSURANCE & FINANCIAL SERVICES
- INTELLECTUAL PROPERTY
- INTERNATIONAL
- LABOR RELATIONS & EMPLOYMENT
- MERGERS & ACQUISITIONS
- PRODUCTS LIABILITY
- PROFESSIONAL LIABILITY
- PROJECT DEVELOPMENT & FINANCE
- PUBLIC FINANCE
- REAL ESTATE: LAND USE, DEVELOPMENT & FINANCE
- TAX (INTERNATIONAL, FEDERAL AND STATE)
- TELECOMMUNICATIONS & UTILITIES
- TRUSTS, ESTATES & PERSONAL PLANNING
- VENTURE CAPITAL & EMERGING COMPANIES
- WHITE COLLAR CRIME

CAFTA—Delayed implementation

By Tom Morante and Yani Contreras

In a prior E-lert, we discussed the development of CAFTA and its possible benefits to global financial services providers. As noted, the expectation was that implementation of CAFTA would be celebrated on January 1st, 2006, but now, hopes of even a March 1st effective date have come and gone – except for El Salvador. The rest of the signatory countries in Central America face mounting opposition to certain aspects of the Agreement—and arguably these delays complicate plans of U.S. financial services companies looking to invest in the region. Article 1.2 of CAFTA requires that each country create effective procedures for the implementation of the agreement, which include the adoption of internal legislation in order to encourage expansion and diversification of trade, eliminate barriers, promote conditions of fair competition, increase investment opportunities, provide adequate and effective protection and enforcement of intellectual property rights, among others. The failure to implement internal legislation consistent with CAFTA requirements as interpreted by the United States has precipitated delays.

The scheme for the implementation process provided in CAFTA contemplates that the Agreement will enter into force on a "rolling basis." Article 22.5 of CAFTA provides that if the free trade agreement had not entered into force on January 1, 2005, which has proven to be the case, the agreement would become effective at such time as the United States and one or more other signatories notify the depository in writing that they have completed the necessary legal procedures. After such initial notification, the agreement would enter into force for any other signatory 90 days after the date on which that signatory notifies the depository in writing that it has completed its applicable legal procedures. This implementation structure allows the countries to enter into CAFTA in different stages depending on the progress each country has made in adopting the procedures required by the agreement.

In December 2005, the Salvadoran Legislative Assembly approved certain legal reforms modifying domestic legislation related to telecommunications, trademarks and insurance—in order to harmonize the Salvadoran laws with the requirements for implementation of CAFTA. In the context of insurance, the Salvadoran Insurance Companies Law was amended to provide that insurance policy forms need to be approved by the Insurance Superintendency, and if the forms are inconsistent with the regulations, the Superintendency has the authority to recommend changes which the insurer must accommodate or face suspension of sales of non-conforming policy forms. El Salvador also acquiesced in certain demands of the U.S.

JONES WALKER

ADMIRALTY & MARITIME

ANTITRUST & TRADE REGULATION

APPELLATE LITIGATION

AVIATION

BANKING

BANKRUPTCY, RESTRUCTURING &
CREDITORS-DEBTORS RIGHTS

BUSINESS & COMMERCIAL LITIGATION

CLASS ACTION DEFENSE

COMMERCIAL LENDING & FINANCE

CONSTRUCTION

CORPORATE & SECURITIES

EMPLOYEE BENEFITS, ERISA, &
EXECUTIVE COMPENSATION

ENERGY

ENVIRONMENTAL & TOXIC TORTS

GAMING

GOVERNMENT RELATIONS

HEALTH CARE

INSURANCE & FINANCIAL SERVICES

INTELLECTUAL PROPERTY

INTERNATIONAL

LABOR RELATIONS & EMPLOYMENT

MERGERS & ACQUISITIONS

PRODUCTS LIABILITY

PROFESSIONAL LIABILITY

PROJECT DEVELOPMENT & FINANCE

PUBLIC FINANCE

REAL ESTATE: LAND USE,
DEVELOPMENT & FINANCE

TAX (INTERNATIONAL,
FEDERAL AND STATE)

TELECOMMUNICATIONS & UTILITIES

TRUSTS, ESTATES &
PERSONAL PLANNING

VENTURE CAPITAL &
EMERGING COMPANIES

WHITE COLLAR CRIME

government regarding intellectual property relative to sales of copied DVDs and CDs, and with respect to meat inspections. Based on these legislative initiatives, the U.S. government—through the Office of the U.S. Trade Representative (USTR) authorized the issuance of a Resolution the formal entry into force of CAFTA as between the U.S. and El Salvador on March 1, 2005, and El Salvador's President likewise formally announced entry into force of CAFTA.

The situation in Nicaragua is somewhat different as groups such as the National Workers' Front have challenged CAFTA implementation before the Nicaraguan Supreme Court as contravening in some aspects of Nicaragua's constitution. This challenge to the Supreme Court suggests that the implementation process in Nicaragua may take longer than initially expected. In Guatemala, an obstacle to CAFTA is the concern of the U.S. government that Guatemala's pending intellectual property law may not be strict enough to meet CAFTA's standards. Guatemala has not yet appeared willing to adopt stricter measures in this context. Costa Rica, with the largest economy in the region, has yet to vote on CAFTA. Several groups in Costa Rica have expressed opposition to CAFTA, including the union of employees of the Costa Rican Electricity Institute (the state-run power and telecommunications company) and the National Insurance Institute (which maintains the insurance monopoly). Although one presidential candidate has indicated opposition to CAFTA, it is anticipated that if the election results confirm Oscar Arias as the president of Costa Rica, as indicated by unofficial polls, CAFTA will be approved and quickly implemented.

Despite opposition, the Central American governments continue to promote CAFTA—with its promise of jobs, investment and economic opportunities—in numerous sectors, including financial services. However, resistance to implementation of CAFTA remains in several countries at a time when the United States seeks bilateral free trade agreements as well as regional trade agreements in Latin America, such as the agreement with the Andean countries. Against this backdrop, the U.S. has pushed to rekindle the WTO Services negotiations with the objective of further liberalizing rules regulating trade in international services under the General Agreement on Trade in Services (GATS.).

Contact Tom Morante at tmorante@joneswalker.com with comments and questions.