



THE DOMINICAN REPUBLIC AND THE DOMINICAN REPUBLIC – CENTRAL AMERICA FREE TRADE AGREEMENT: NEW OPTIONS FOR INTELLECTUAL PROPERTY PROTECTION

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Here she explains the importance of the Dominican Republic - Central America Free Trade Agreement (DR-CAFTA) to Intellectual Property (IP) law in the Dominican Republic.

WHAT IS DR-CAFTA?

The free trade agreement entered into by the Dominican Republic, several Central American countries and the United States, known as DR-CAFTA¹, represents the most significant step forward for the protection of intellectual property rights in the Dominican Republic. The goal of DR-CAFTA is to create a free trade area² similar to the one created by NAFTA within the US, Canada and Mexico.

WHAT IMPACT HAS DR-CAFTA HAD ON INTELLECTUAL PROPERTY LAW IN THE DOMINICAN REPUBLIC?

The DR-CAFTA entered into effect on March 1, 2007 and immediately impacted all areas of IP legislation and regulation in the Dominican Republic. For example, the Dominican Republic began to incorporate mechanisms in local law meant to safeguard IP rights in accordance with the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS)³, a WTO-sponsored treaty that entered into effect in 2000 (the Dominican Republic became a party to TRIPS in 2005) and which introduced minimum international standards for IP protection. TRIPS is incorporated by reference in DR-CAFTA.

WHAT HAS THE LEGISLATION MEANT IN PRACTICAL TERMS?

Chapter XV of the DR-CAFTA relates to IP and generally mandates the protection of patents, trademarks, copyright, data and other IP rights. Pursuant to the provisions of Chapter XV, the Dominican Republic has agreed and taken measures to:

1. Ratify various international agreements, such as the Patent Cooperation Treaty (PCT), the International Union for the Protection of New Varieties of Plants (UPOV Convention 1991), the Budapest Treaty on the International Recognition of the Deposit of Microorganisms for the Purposes of Patent Procedure (1980), the Trademark Law Treaty (1994) and the Convention Relating to the Distribution of Program-Carrying Signals Transmitted by Satellite (1974).

2. Adopt linkage provisions. 'Linkage' is meant to link patent protection and drug registration of a



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pharmaceutical product when the active ingredient of the product enjoys patent protection. The 'linking' between the health approval process and the patent approval process is an indispensable tool for the effective protection of pharmaceutical patents.

3. Provide for 'data exclusivity', on the data developed by the innovator to establish the safety and efficacy of a pharmaceutical product (such as clinical trials). The data is protected

from use by a third party for a period of 5 years, granting the product's owner complete exclusivity during this period.

4. Include 'patent term extensions' of up to three years, which are meant to compensate the patent holder for delays in the granting of a patent application (patents are granted for 20 years following the filing of the patent application) or approval of a drug for market.

5. Broaden protection of 'well known marks' to products and services which are not similar, whether registered or not.

6. Provide for the protection of other IP rights, such as collective, certification and sound and scent marks, denominations of origin, geographical indications and domain names in the internet.

7. Provide for transparency measures, the protection of existing subject matter, the control of anticompetitive practices, and enforcement measures.

8. Establish an on-line data base for trademark application and registration.

International treaties to which the Dominican Republic is party are considered to be local laws. They may be directly enforced and implemented by the courts and the regulators, respectively.

In addition to the treaty provisions previously discussed, the Constitution of the Dominican Republic explicitly includes the protection of IP rights,⁴ and has included this protection since 1854.

The combination of the implementation of the DR-CAFTA and the provisions of the Constitution constitute a significant advancement in the protection of IP rights in the Dominican Republic. In the coming years, holders of patent and trademark rights will benefit from the provisions of the DR-CAFTA. ■

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NOTES

1 See Office of the United States Trade Representative: <http://www.ustr.gov/trade-agreements/free-trade-agreements/cafta-dr-dominican-republic-central-america-fta>

2 After Mexico and Brazil, the DR-CAFTA countries are, collectively, the third largest export market to the US. *Ibid.*

3 Agreement on Trade-Related Aspects of Intellectual Property Rights, Apr. 15, 1994, Marrakesh Agreement Establishing the World Trade Organization, Annex 1C - Results of the Uruguay Round, 33 I.L.M. 1197 (1994).

4 See Article 52 of the Constitution of the DR, 2010.