

COSTA RICA

TRADE SUMMARY

In 2001, the U.S. trade deficit with Costa Rica was \$391 million, a decrease of \$688 million from the U.S. trade deficit of \$1.1 billion in 2000. U.S. goods exports to Costa Rica were \$2.5 billion, an increase of \$36 million (1.5 percent) from the level of U.S. exports to Costa Rica in 2000. Costa Rica was the United States' 39th largest export market in 2001. U.S. imports from Costa Rica were \$2.9 billion in 2001, a decrease of \$652 million (18.4 percent) from the level of imports in 2000.

The stock of U.S. foreign direct investment (FDI) in Costa Rica in 2000 amounted to nearly \$2.0 billion, an increase of 28.9 percent from the level of U.S. FDI in 1999. U.S. FDI in Costa Rica is concentrated largely in the wholesale and manufacturing sectors.

IMPORT POLICIES

As a member of the Central American Common Market (CACM), Costa Rica agreed to reduce the common external tariff to a maximum of 15 percent in 1995. This arrangement allowed each member to determine the timing of the reductions. Costa Rica completed its agreed reductions with a decree published on January 6, 2000.

Selected agricultural commodities are protected with tariffs that significantly exceed the 15 percent common external tariff ceiling. These specially protected commodities include dairy products (65 percent) and poultry products (150 percent). Most tariffs on agricultural products range from one to 15 percent ad valorem, however. New and used automobiles are also taxed heavily, from 52 percent to 79 percent, depending upon the age of the vehicle.

Costa Rica is attempting to meet its WTO obligations to lower or eliminate tariffs on agricultural imports and not to employ non-tariff

import barriers. There are, however, particular problems with rice and poultry imports from the United States. U.S. exporters of fresh horticultural products have raised concerns about high tariffs on these products.

Costa Rica levies a sales tax of 13 percent on most goods and services, whether locally produced or imported. A variable selective consumption tax is also applied to many locally produced goods and to about half of all products imported. Among the highest taxed items are arms and ammunition (75 percent), costume jewelry (50 percent), fireworks (50 percent), new and used vehicles (variable), and wine and beer (40 percent).

The Government of Costa Rica agreed in the Uruguay Round negotiations to eliminate import permits other than sanitary and phytosanitary permits. Costa Rica's Uruguay Round implementing legislation eliminated quantitative restrictions and some requirements for import licenses and permits on the imports of pork and related by-products, poultry, seeds, rice, wheat, white and yellow corn, beans, sugar, sugar cane and related products, dairy products, and coffee. The import permits in many cases have been replaced by tariffs as a result of the Uruguay Round negotiations.

The process for obtaining standard sanitary and phytosanitary documentation can often be cumbersome and lengthy. Importers of U.S. rice, onions, and potatoes have experienced difficulty gaining entry for their shipments. There have been allegations that officials of the Ministry of Agriculture have delayed issuance of standard sanitary/phytosanitary documentation to protect domestic farmers. The shipments have eventually been allowed to enter, but the delays have led to lost earnings by the shipments' owners. Costa Rican customs procedures remain complex and bureaucratic despite recent laws and improvements such as the establishment of an electronic "one-stop" import and export window significantly reducing the time required for customs processing.

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Imports of U.S. poultry were banned in January 2001 when Costa Rica decided to enforce a regulation that requires export plants to be inspected and approved by the Costa Rican Government. Costa Rica inspected five U.S. poultry export plants in November 2001 and approved four of them to export to Costa Rica in December 2001.

STANDARDS, TESTING, LABELING AND CERTIFICATION

All foods, pharmaceuticals, and agricultural goods, locally produced or imported, must be tested and certified by the Ministry of Health before being allowed to be sold. A system of standards exists, but lack of adequate laboratory testing equipment and funds prevents effective local controls being implemented. Costa Rica requires instead that all imported products be certified safe and allowed for sale in the country of origin.

GOVERNMENT PROCUREMENT

Costa Rica's government procurement system stipulates that public entities with annual budgets of more than \$200 million are generally obliged to issue public tenders for purchases over about \$3 million. Entities may make purchases through tenders from a registered suppliers list for amounts between \$130,000 and \$3 million. Purchases under \$130,000 may be made from a list of pre-selected bidders. (The threshold amount for the three methods used for government purchases may vary somewhat among the different ministries.) Costa Rica is not a signatory of the WTO Agreement on Government Procurement.

Recently, U.S. exporters report unsatisfactory experience when responding to Costa Rican Government tenders. For example, tenders have been suddenly annulled and rebid after the financial analysis was completed or the tender specifications have been substantially modified

midway through the process. The bidder must bear the costs associated with these changes.

EXPORT SUBSIDIES

Incentives for non-traditional exports, including the tax credit certificates (CATs) and tax holidays, were phased out in 1999. Tax holidays are still available for investors in free trade zones, unless tax credits are available in an investor's home country for taxes paid in Costa Rica.

INTELLECTUAL PROPERTY RIGHTS (IPR) PROTECTION

Inadequate enforcement of Costa Rica's intellectual property laws remains a U.S. concern, as reflected in the country's placement on the Special 301 Priority Watch List in April 2001. While many elements of Costa Rican intellectual property laws are compliant with TRIPS requirements, the country's criminal codes have certain weaknesses that limit effective deterrence of intellectual property crimes. A report prepared by the International Intellectual Property Alliance estimates that copyright infringement in Costa Rica cost U.S. firms \$20.1 million in 2000. The Costa Rican Government recently has taken important steps to improve intellectual property protection, including increased raids on companies, the formation of an inter-governmental intellectual property rights commission, and the training of judges and prosecutors on intellectual property laws. U.S. companies and industry groups are sponsoring additional training sessions on intellectual property protection. U.S. industry remains concerned over draft legislation which would provide lesser penalties for intellectual property crimes than for non-intellectual property crimes, and which decriminalizes some infringement.

Copyrights

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Costa Rica's copyright law is generally adequate, but not uniformly enforced. The copyright regime was revised in 1994 to provide specific protection for computer software and in 1999 to protect integrated circuit designs. The National Assembly ratified the WIPO Copyright Treaty and the WIPO Performances and Phonograms Treaty at the end of 1999. Piracy of satellite television transmissions by the domestic cable television industry has been curtailed, but some apartment buildings and hotels, particularly in areas not served by major cable service providers, continue to engage in satellite signal piracy. Unauthorized sound recordings, videos and computer software are also widespread, although much progress has been made in reducing such practices. Video piracy, for instance, has been significantly reduced in recent years.

Patents

The Legislative Assembly ratified reforms to the Paris Convention for the Protection of Industrial Property in 1995. The new patent law extended the term of protection for a patent from 12 to 20 years from the date of grant for all inventions, even those previously considered "in the public interest," which only had patent protection for as short as one year, a violation of the WTO Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS). Problems remain, however, for pharmaceutical companies seeking to protect the use of data submitted for regulatory approval, in that such data are not being protected from unfair commercial use by unauthorized third parties.

Trademarks

Counterfeiting of well-known trademarks occurs frequently in Costa Rica. Legal recourse against these practices is available in Costa Rica, but may require protracted and costly litigation. The Costa Rican authorities have recently stepped up efforts to raid businesses and confiscate property,

especially clothing, which is infringing on registered trademarks. However, Costa Rican authorities require that trademark owners post a 25 percent bond before enforcement officials will move to seize a shipment of counterfeit goods.

SERVICES BARRIERS

Costa Rica's insurance, telecommunications, large electrical generation and distribution, and petroleum distribution industries are state monopolies. In addition, there are restrictions on the participation of foreign companies in some private sector activities, such as customs handling, medical services, and other professions requiring Costa Rican registration and long-term residency of the persons providing the services. The Costa Rican Government is seeking private sector partners to manage the ports and railroad system, which are still state-owned.

Costa Rica has ratified its commitments under the 1997 WTO Financial Services Agreement and accepted the Fifth Protocol of the GATS. Under this agreement, Costa Rica committed to allow foreign financial service providers to establish 100 percent-owned bank subsidiaries in Costa Rica to provide lending and deposit-taking services, leasing services, credit card services, and financial information services. Costa Rica made no commitments in the WTO for the provision of securities trading, underwriting services, or any type of insurance services.

Financial reform legislation enacted in 1995 eliminated state-owned banks' monopoly on checking accounts and savings deposits of less than 30 days and allowed private commercial banks to access the Central Bank's discount window beginning in September 1996. However, private commercial banks are required to lend between 10-17 percent of their short-term assets to state-owned commercial banks and/or to open

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branches in rural areas of the country to qualify for the benefits of the law. This requirement is being challenged in Costa Rican courts.

Foreign individuals wishing to participate in some sectors may be discouraged by regulations governing the practice of a profession. For example, medical practitioners, lawyers, certified public accountants, engineers, architects, teachers, and other professionals must be members of an officially recognized guild (*colegio*) which sets residency, examination, and apprenticeship requirements.

The Costa Rican constitution grants a monopoly over the insurance sector to the National Insurance Institute (INS). The INS also provides fire department services and owns and manages medical/rehabilitation clinics.

INVESTMENT BARRIERS

The slow pace of Costa Rica's legal system can be rightly viewed as an investment barrier, as many U.S. investors have been discouraged from pursuing business opportunities in Costa Rica out of concern for their ability to receive prompt legal protection. According to some estimates, a commercial dispute within the Costa Rican legal system can take an average 10 years to be resolved. Another concern to existing and potential U.S. investors is the Costa Rican Constitutional Court's consideration of "*recursos de amparo*," or challenges against acts by the authorities that may be considered illegal, and to review legislation and regulations that often appears to have little bearing on the Constitution. One U.S. investor had its investment project delayed for over 18 months pending a review from the Constitutional Court.

Costa Rica's expropriation law makes clear that expropriations are to occur only after full advance payment is made, in accordance with the Costa Rican constitution. The law applies to Costa

Ricans and foreigners alike. Some older expropriation cases remain unresolved despite improvements in the legal framework. Invasions of land by organized squatters are not uncommon. The U.S. Government has urged the Costa Rican Government to provide prompt, adequate and effective compensation for expropriated lands, to improve security, and to protect property owners.

State monopolies cover electrical generation and distribution, as well as petroleum refining. An electricity co-generation law enacted in 1996 allowed some private-sector participation (limited to 15 percent of the total market) in the production of electricity, but not in its transmission. This law has since been modified to permit the private construction and operation of plants under build-operate-transfer (BOT) and build-lease-transfer (BLT) mechanisms, but the operator must have at least 35 percent Costa Rican equity. Legislative proposals to open the electricity and telecommunications sectors to investment and competition were abandoned in 2000 in the wake of large-scale demonstrations against reform and a Supreme Court ruling against specific legislation under discussion. Existing private power producers are having their long-term, fixed-rate contracts challenged by certain Costa Rican Governmental organizations, bringing into question the sanctity of contracts made with the Costa Rican Government.