

COSTA RICA

TRADE SUMMARY

The U.S. goods trade balance with Costa Rica went from a trade surplus in 2003 (\$49.3 million) to a trade deficit of \$29.2 million in 2004. U.S. goods exports in 2004 were \$3.3 billion, down 3.2 percent from the previous year. Corresponding U.S. imports from Costa Rica were \$3.3 billion, down 0.9 percent. Costa Rica is currently the 33rd largest export market for U.S. goods.

The stock of U.S. foreign direct investment (FDI) in Costa Rica in 2003 was \$1.8 billion, the same as in 2002. U.S. FDI in Costa Rica is concentrated largely in the manufacturing sector.

IMPORT POLICIES

Free Trade Agreement

The United States engaged in free trade agreement negotiations with five Central American countries (Costa Rica, El Salvador, Guatemala, Honduras, and Nicaragua) in 2003. The United States concluded negotiations with El Salvador, Guatemala, Honduras, and Nicaragua in December 2003 and with Costa Rica in January 2004. In May 2004, the six countries signed the United States – Central America Free Trade Agreement. During 2004, the United States and the Central American countries engaged in negotiations with the Dominican Republic to integrate that country into the free trade agreement. On August 5, 2004, the seven countries signed the Dominican Republic – Central America – United States Free Trade Agreement (CAFTA-DR). El Salvador ratified the Agreement in December 2004 and Honduras ratified in March 2005. Legislative approval is pending in the United States and the other signatories to the Agreement.

The CAFTA-DR will remove barriers to trade and investment in the region and will strengthen regional economic integration. The CAFTA-DR will also require the Central American countries and the Dominican Republic to undertake needed reforms to confront many of the problems noted below in areas including: customs administration; protection of intellectual property rights; services, investment, and financial services market access and protection; government procurement; sanitary and phytosanitary (SPS) barriers; and other non-tariff barriers.

Tariffs

As a member of the Central American Common Market (CACM), Costa Rica agreed in 1995 to reduce its common external tariff to a maximum of 15 percent. However, some industrial goods, such as new and used automobiles, are subject to much higher tariffs. Once the CAFTA-DR goes into effect, about 80 percent of U.S. industrial and commercial goods will enter the region duty-free, with the remaining tariffs phased out over ten years. Nearly all textile and apparel goods that meet the Agreement's rules of origin will be duty-free and quota-free immediately,

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promoting new opportunities for U.S. and regional fiber, yarn, fabric and apparel manufacturing. (The Agreement's tariff treatment for textile and apparel goods may be made retroactive to January 1, 2004.)

Most tariffs on agricultural products range from one percent to 15 percent. However, selected agricultural commodities currently are protected by tariffs that significantly exceed the 15 percent CACM common external tariff ceiling. These commodities include dairy products (40 percent to 65 percent) and poultry products (150 percent). Under the CAFTA-DR, Costa Rica will eliminate its tariffs on virtually all agricultural products within fifteen years (17 years for chicken leg quarters and 20 years for rice and dairy products). For the most sensitive products, tariff-rate quotas will permit some immediate zero-duty access for specified quantities during the tariff phase-out period, which will expand over time. Costa Rica will liberalize trade in fresh potatoes and onions through expansion of a tariff-rate quota.

The Agreement also requires transparency and efficiency in administering customs procedures, including the CAFTA-DR rules of origin. Costa Rica committed to ensure procedural certainty and fairness and all parties agreed to share information to combat illegal transshipment of goods.

Non-Tariff Measures

Costa Rica levies a sales tax of 13 percent on most goods and services, whether locally produced or imported. Costa Rica also applies a consumption tax (the level of which varies depending on the good) to many locally-produced goods and to about half of all imported goods. 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). A bill currently in the Costa Rican Congress contemplates the enactment of a value-added tax including a rate of up to 79 percent on used autos.

STANDARDS, TESTING, LABELING AND CERTIFICATION

The establishment of an electronic "one-stop" import and export window, and other recent improvements, have significantly reduced the time required for customs processing in Costa Rica. Nonetheless, procedures remain complex and bureaucratic. Sanitary and phytosanitary (SPS) requirements can often be cumbersome and lengthy. In addition, the Ministry of Agriculture and Livestock (MAG) enforces SPS measures that appear to be inconsistent with international standards and not based on science (e.g., zero tolerance for salmonella on raw meat and poultry products). Delayed entry of products into the country has resulted in lost earnings for U.S. exporters. In some cases, shipments have been destroyed.

Currently, all foods, pharmaceuticals, agricultural goods, and chemicals and cosmetics for human and animal consumption, locally produced or imported, must be tested and registered by the Ministry of Health before they can be sold. However, as implemented, this system appears to place greater burdens on imported than domestically produced goods. For example, a system of

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standards exists for local products, but lack of adequate laboratory testing equipment and funds prevents effective analysis on local products. In addition, Costa Rica requires that all imported products be certified safe and allowed for sale in the country of origin in order to be registered. Food traders express concern regarding the length of time it takes to register a product under this process, which can be months. Costa Rica requires extensive documentation to be notarized by the Costa Rican consulate in the country of origin for the importation of distilled spirits. These import licensing requirements are burdensome and costly to U.S. exporters. However, the five Central American countries, including Costa Rica, are in the process of developing common standards for several products, including distilled spirits, which should facilitate trade.

Effective December 24, 2003, Costa Rica temporarily banned imports of U.S. beef due to the single case of Bovine Spongiform Encephalopathy (BSE) in the United States. In May 2004, MAG indicated that imports of boneless beef from animals of less than 30 months of age could be imported; however, Costa Rica's inspection and certification requirements have prevented the resumption of imports. The United States is working to eliminate these plant by plant inspection requirements.

In May 2003, Costa Rica issued a decree allowing for the certification of an inspection system to replace a regulation that required poultry export plants to be inspected and approved by the Costa Rican Government. Amendments to Costa Rica's Law on Animal Health, which would provide statutory authority for Costa Rica to undertake an equivalency determination, are stalled in the Costa Rican Congress.

When the United States and Central America launched the free trade agreement negotiations, they initiated an active working group dialogue on SPS barriers to agricultural trade that met in parallel with the negotiations to facilitate market access. The objective was to leverage the impetus of active trade negotiations to seek difficult changes to the Central American countries' SPS regimes. Through the work of this group, Costa Rica has committed to resolve specific measures restricting U.S. exports to Costa Rica. In particular, for meat, dairy and poultry, Costa Rica agreed to undertake an equivalency determination for all plants inspected under the U.S. food safety and inspection system.

GOVERNMENT PROCUREMENT

Costa Rica is not a party to the WTO Agreement on Government Procurement. In recent years, a growing number of U.S. exporters and investors have reported unsatisfactory experiences when responding to Costa Rican government tenders. For example, the Government of Costa Rica (through the Comptroller General) and large state-owned enterprises have occasionally annulled and re-bid tenders after the financial analysis was completed and awards granted. The Government of Costa Rica has also substantially modified tender specifications midway through the procurement process. The bidders in these cases were forced to bear the costs associated with these changes.

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The CAFTA-DR requires fair and transparent procurement procedures, including advance notice of purchases and timely and effective bid review procedures. Under the CAFTA-DR, U.S. suppliers will be permitted to bid on procurements covered by the Agreement for most Costa Rican government entities, including key ministries and state-owned enterprises on the same basis as Costa Rican suppliers. The anti-corruption provisions in the Agreement require each government to ensure that bribery in trade-related matters, including in government procurement, is treated as a criminal offense, or is subject to comparable penalties, under its law.

EXPORT SUBSIDIES

Tax holidays are available for investors in free trade zones, unless tax credits are available in an investor's home country for taxes paid in Costa Rica. Under the CAFTA-DR, Costa Rica may not adopt new duty waivers or expand existing duty waivers conditioned on the fulfillment of a performance requirement (e.g., the exportation of a given level or percentage of goods). Costa Rica may maintain existing duty waiver measures through 2009 provided such measures are consistent with its WTO obligations.

INTELLECTUAL PROPERTY RIGHTS (IPR) PROTECTION

The United States continues to have concerns over Costa Rica's inadequate enforcement of its intellectual property laws. Therefore, Costa Rica remained on the 2004 Special 301 Watch List. While many elements of Costa Rican intellectual property laws appear to be consistent with TRIPS obligations, the country's criminal codes have certain weaknesses that limit effective deterrence of intellectual property crimes.

The most significant step the Costa Rican government has taken to improve intellectual property protection is to increase raids on companies. However, other initiatives, including the formation of an inter-governmental intellectual property rights commission and the training of judges and prosecutors on intellectual property laws, have not produced significant improvements in the prosecution of IPR crimes.

Costa Rica is currently considering meaningful changes to its existing IPR laws to address limitations and loopholes that currently prevent effective enforcement. For example, there is a draft bill in Congress to modify the Intellectual Property Enforcement Law by deleting the "insignificance principle." According to industry, this threshold currently provides a loophole that prevents prosecution of retail-level piracy. This draft bill also recommends that intellectual property violators serve up to five years in prison. However, several proposals to strengthen IPR laws have languished in the Legislative Assembly during 2004, and IPR reforms are not likely to be enacted before the CAFTA-DR is considered by the Assembly.

CAFTA-DR obligations would strengthen Costa Rica's IPR protection regime to conform with, and in many areas exceed, WTO norms. CAFTA-DR obligations would also provide stronger deterrence against piracy and counterfeiting by criminalizing end user piracy and requiring Costa

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Rica to authorize the seizure, forfeiture, and destruction of counterfeit and pirated goods and the equipment used to produce them. The CAFTA-DR text also mandates both statutory and actual damages for copyright and trademark infringement, which would ensure that monetary damages can be awarded even when it is difficult to assign a monetary value to the violation.

Copyrights

Costa Rica's copyright law is generally adequate, but not uniformly enforced. Long delays in copyright enforcement cases continue to be a serious problem. The copyright regime was revised in 1994 to provide specific protection for computer software and in 1999 to protect integrated circuit designs. In addition, the Legislative Assembly ratified the WIPO Copyright Treaty and the WIPO Performances and Phonograms Treaty at the end of 1999.

Though piracy of satellite television transmissions by the domestic cable television industry has been curtailed, U.S. industry continues to express concern that 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, optical discs, and computer software are also widespread, although some progress has been made in reducing their presence in the market. Efforts in copyright protection are significantly hindered by the lack of adequate funding and personnel committed to IP enforcement. The CAFTA-DR enforcement provisions are designed to help reduce copyright piracy.

Patents

The Legislative Assembly ratified reforms required by the Paris Convention for the Protection of Industrial Property in 1995. The patent law extended the term of protection for a patent from 12 years to 20 years from the date of the filing of the application for all inventions.

However, problems remain, for pharmaceutical and agricultural chemical companies seeking to protect undisclosed data submitted for regulatory approval, from unfair commercial use by unauthorized third parties.

Costa Rica has committed to protect such test data under the CAFTA-DR. This data will be protected against unfair commercial use for a period of 5 years for pharmaceuticals and 10 years for agricultural chemicals. In addition, there is no effective means of providing protection for plant varieties in Costa Rica's current law. The CAFTA-DR obligations require that Costa Rica accede to the UPOV Convention (International Union for the Protection of New Varieties of Plants, 1991) by June 1, 2007.

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.

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Accordingly, Costa Rican authorities have recently intensified efforts to raid businesses and confiscate property, especially clothing, which is infringing registered trademarks.

SERVICES BARRIERS

Costa Rica's insurance, telecommunications, electricity distribution, petroleum distribution, potable water, sewage, and railroad transportation 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, prison operation, and other professions requiring Costa Rican registration and long-term residency of the persons providing the services. Under the CAFTA-DR, Costa Rica will accord substantial market access across their entire services regime, subject to very few exceptions.

For example, liberalization in insurance will be achieved through a phased-in approach with an initial opening at entry into force, an opening of the vast majority of the market by 2008, and a total opening by 2011. In addition, Costa Rica made specific commitments to gradually open its telecommunications market in three key areas – private network services and Internet services starting in 2006, and wireless services starting in 2007 – and committed to establishing a regulatory framework to help foster effective market access. Under the CAFTA-DR, Costa Rica agreed to enact a new legal framework to modernize telecommunications provider ICE.

Also, 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. However, the CAFTA-DR will provide for openings in all these areas (insurance openings to be phased in as noted above).

Since 1995, private commercial banks have been permitted to offer checking accounts and savings deposits of less than 30 days and, since 1996, to access the Central Bank's discount window. However, private commercial banks are required to open branches in rural areas of the country or to deposit with the Central Bank 17 percent of their checking account deposits for state-owned commercial banks that have rural branches in order to qualify for the benefits of the law. The CAFTA-DR will ensure that foreign banks are treated under the same rules as domestic private banks.

Costa Rican regulations restrict the ability of certain professions to practice on a permanent basis in Costa Rica. For example, medical practitioners, lawyers, certified public accountants, engineers, architects, teachers, and other professionals must be members of an officially recognized association (colegio) which sets residency, examination, and apprenticeship requirements. However, under the CAFTA-DR, Costa Rica agreed to allow the provision of

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certain professional services on a reciprocal basis and also agreed to provide for temporary licensing of professional services.

INVESTMENT BARRIERS

Several U.S. investors have recently noted serious difficulties executing contracts made with the Costa Rican government, bringing into question the sanctity of contracts made with the Costa Rican government. For example, a U.S. company has expressed concern that the Government of Costa Rica failed to honor the company's petroleum exploration concession rights in Costa Rica and has not been willing to negotiate a settlement of the company's claims. Another U.S. company, operating under a Costa Rican joint venture, has suffered financial losses, as it has been denied the ability to fully exercise its concession rights to finance operations and capital improvements at Costa Rica's international airport while it works to negotiate a resolution with the Costa Rican government.

In addition, the slow pace of Costa Rica's legal system (a commercial dispute within the Costa Rican legal system can take an average of 10 years to be resolved) has been cited as an investment barrier by many U.S. investors. Another concern to existing and potential U.S. investors is the frequent use of "recursos de amparo" before the Costa Rican Constitutional Court, which are challenges to review the possible illegality of acts by the authorities or to review the constitutionality of legislation and regulations. Although these measures are generally seen as pro-investor, such challenges have been used at times to slow procedures and hinder the quick resolution of disputes.

Costa Rica's constitution and the expropriation law make clear that expropriations are to occur only after full advance payment is made. The law applies to Costa Ricans and foreigners alike.

While electricity generation and distribution remain a state monopoly, 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 private investment and competition were abandoned in 2000 in the wake of large-scale demonstrations against reform and a Constitutional Court ruling against specific legislation under discussion. Existing private power producers have had their long-term, fixed-rate contracts challenged by certain Costa Rican governmental organizations, but these contracts have been honored.

Under the CAFTA-DR, all forms of investment will be protected, including enterprises, debt, concessions, contracts and intellectual property. U.S. investors will enjoy in almost all circumstances the right to establish, acquire and operate investments in Costa Rica on an equal footing with local investors. Among the rights afforded to U.S. investors are due process

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protections and the right to receive a fair market value for property in the event of an expropriation. Investor rights will be backed by an effective, impartial procedure for dispute settlement that is fully transparent. Submissions to dispute panels and panel hearings will be open to the public, and interested parties will have the opportunity to submit their views.

OTHER BARRIERS

The law regulating commercial representatives of foreign firms (Law No. 6209) grants local companies exclusive representation, without a signed agreement, for an indefinite period of time. In most cases, foreign companies must pay indemnity compensation in order to terminate an undesirable relationship with the local company.

Under CAFTA-DR, Costa Rica has committed to change its “dealer protection” regime. Under its existing regime, U.S. firms may be tied to exclusive or inefficient distributor arrangements. Costa Rica committed to establish a new legal regime that will give U.S. firms and their Costa Rican partners more freedom to contract the terms of their commercial relations and that will encourage the use of arbitration to resolve disputes between parties to dealer contracts.