

COSTA RICA

TRADE SUMMARY

The U.S. goods trade balance with Costa Rica went from a trade deficit of \$27.4 million in 2004 to a trade surplus of \$177 million in 2005. U.S. goods exports in 2005 were \$3.6 billion, up 8.8 percent. Corresponding U.S. imports from Costa Rica were \$3.4 billion, up 2.6 percent. Costa Rica is currently the 36th largest export market for U.S. goods.

The stock of U.S. foreign direct investment (FDI) in Costa Rica in 2004 was \$1.1 billion, up from \$863 million in 2003. U.S. FDI in Costa Rica is concentrated largely in the manufacturing sector.

IMPORT POLICIES

Free Trade Agreement

The United States concluded free trade agreement 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 integrated the Dominican Republic 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).

All of the signatory countries except Costa Rica have ratified the agreement. CAFTA-DR will enter into force between the United States and other signatories on a rolling basis as the United States determines that countries have taken sufficient steps to implement their commitments under the Agreement.

In October 2005, President Pacheco sent CAFTA-DR to the Legislative Assembly to start the ratification process. However, the Administration has yet to submit several significant bills that are needed to implement CAFTA-DR, such as proposed laws to gradually open the telecommunications and insurance markets and to provide greater protections for intellectual property rights. Implementation of CAFTA-DR will remove barriers to trade and investment in the region and strengthen regional economic integration. CAFTA-DR will also require the Central American countries and the Dominican Republic to undertake reforms to provide market liberalization, transparency and certainty in such areas as: customs administration; protection of intellectual property rights; services, investment, financial services; government procurement; sanitary and phytosanitary (SPS) barriers; and to liberalize 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 CAFTA-DR enters

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into effect, about 80 percent of U.S. industrial goods will enter the region duty free immediately, 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, promoting new opportunities for U.S. and regional fiber, yarn, fabric, and apparel manufacturing.

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 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.

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 that has been under debate for almost three years before the Costa Rican Congress would replace the sales tax with a general value-added tax on all goods and services with rates up to 79 percent on used cars.

The CAFTA-DR requires transparency and efficiency in administering customs procedures, including 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.

STANDARDS, TESTING, LABELING AND CERTIFICATION

The establishment of an electronic "one-stop" import-export window and other recent improvements have reduced the time required for customs processing in Costa Rica. Nonetheless, procedures remain complex and bureaucratic.

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. As implemented, however, this system appears to place greater burdens on imported goods than on domestically produced goods. For example, in practice, local producers are often not subjected to analysis due to a lack of adequate laboratory testing equipment and funds.

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

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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.

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).

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, the Ministry of Agriculture (MAG) indicated that imports of boneless beef from animals of less than 30 months of age could be imported. Costa Rica's inspection and certification requirements, however, 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 individual 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 Legislative Assembly. 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 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 recognize the equivalence of the U.S. food safety and inspection system, thereby eliminating the need for plant-by-plant inspections.

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 GOCR (through the Comptroller General) has occasionally annulled and re-bid tenders to supply large state-owned enterprises after the financial analysis was completed and the awards granted. The GOCR 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. CAFTA-DR requires the use of fair and transparent procurement procedures, including advance notice of purchases and timely and effective bid review procedures, for procurement covered by the Agreement.

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Under CAFTA-DR, U.S. suppliers will be permitted to bid on procurements of 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, be treated as a criminal offense or subject to comparable penalties under Costa Rican 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. In 2000, Costa Rica ceased granting financial investment subsidies and tax holidays to new exporters. Under 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 U.S. continues to have concerns over Costa Rica's inadequate enforcement of its intellectual property laws. Consequently, Costa Rica remained on the 2005 Special 301 "Watch List". While many elements of Costa Rican intellectual property laws appear to be in line with international standards, the country's criminal codes have certain weaknesses that limit effective deterrence of intellectual property crimes.

The most recent significant step the Costa Rican government has taken to improve intellectual property protection was to increase police raids on individuals and organizations that pirate CDs, DVDS, and sell "knock-off" goods. However, the police have become reluctant to continue such raids because of the lack of will to pursue prosecution. 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. Further, the lack of political will to aggressively prosecute these criminals, due in part to scarce resources, has undercut deterrence. For example, during 2005 the Attorney General instructed prosecutors to make a priority only of trademark, patent, and copyright cases that might negatively affect health.

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" which sets out a threshold of infringement significance below which prosecutors will not prosecute infringements. However these efforts seem to have stalled in the legislature.

According to industry, this threshold currently provides a loophole that prevents prosecution of retail-level piracy. Several proposals to strengthen IPR laws have languished in the Legislative Assembly during the past two years. IPR reforms will be needed to comply with the requirements of CAFTA-DR but have not yet been submitted for consideration by Legislative

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Assembly. Complying with CAFTA-DR obligations would strengthen Costa Rica's IPR protection regime. Implementation of CAFTA-DR obligations would also provide stronger deterrence against piracy and counterfeiting by criminalizing end user piracy and requiring Costa Rica to authorize the seizure, forfeiture, and destruction of counterfeit and pirated goods and the equipment used to produce them – something that the government is not currently capable of doing in an expeditious or effective manner. CAFTA-DR also mandates both statutory and actual damages for copyright and trademark infringement, helping to ensure that monetary damages can be awarded even when it is difficult to assign a monetary value to the violation.

Patents, Plant Protection and Data Protection

Costa Rica acceded to the Paris Convention for the Protection of Industrial Property in 1995. Patent amendments made at that time 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. Costa Rica does not provide protection to pharmaceutical and agricultural chemical companies seeking to protect undisclosed data submitted for regulatory approval, from unfair commercial use by unauthorized third parties. Implementation of CAFTA-DR obligations would require Costa Rica to protect such test data against unfair commercial use for a period of 5 years following the issuance of the market approval for pharmaceuticals and 10 years for agricultural chemicals. In addition, there is no effective means of providing protection for plant varieties under 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, and make best efforts to provide patent protection for plants.

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, Costa Rica became party to the WIPO Copyright Treaty and the WIPO Performances and Phonograms Treaty in 2002. 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. CAFTA-DR enforcement provisions are designed to help reduce copyright piracy.

Trademarks

Counterfeiting of well-known trademarks is widespread in Costa Rica. Legal recourse against these practices is available in Costa Rica, but may require protracted and costly litigation. Costa Rican authorities have recently intensified efforts to raid businesses and confiscate property, especially clothing, which is infringing registered trademarks.

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SERVICES BARRIERS

Costa Rica's insurance, telecommunications, electricity distribution, petroleum distribution, potable water, sewage, and railroad transportation industries are all 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 professional services. Under the CAFTA-DR, Costa Rica will accord substantial market access across their entire services regime, subject to a 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.

Costa Rican regulations restrict the ability of certain professions to practice on a permanent basis in Costa Rica, such as medical practitioners, lawyers, certified public accountants, engineers, architects, teachers, and others. Such professionals must be members of an association (colegio) that sets residency, examination, and apprenticeship requirements. However, under CAFTA-DR, Costa Rica agreed to allow the provision of certain professional services on a reciprocal basis and also agreed to provide for temporary licensing of professional services.

Costa Rica made specific commitments to open its telecommunications market in three key areas and to establish a regulatory framework to foster effective market access. The market openings are in private network services and Internet services starting in 2006 and wireless services starting in 2007. Under CAFTA-DR, Costa Rica agreed to enact a new legal framework to modernize telecommunications provider ICE, and establish an independent regulatory body and regulatory structure. This will require legislative and regulatory reform.

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. The CAFTA-DR, however, will provide for openings in all these areas (insurance openings to be phased in as noted above). Private commercial banks have been permitted to offer checking accounts and savings deposits of less than 30 days since 1995 and to access the Central Bank's discount window, since 1996. 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. CAFTA-DR ensures that foreign banks are treated under the same rules as domestic private banks.

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INVESTMENT BARRIERS

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 protections and the right to receive a fair market value for property in the event of an expropriation. The list of investor rights includes 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.

Currently, in the World Bank's "Doing Business" index, Costa Rica ranks 141 in "enforcing contracts" and 134 in "protecting investors". Several U.S. investors have noted serious difficulties executing contracts made with the Costa Rican government, bringing into question the validity of such contracts. For example, a U.S. company has expressed concern that the Government of Costa Rica failed to honor the company's petroleum exploration permits rights in Costa Rica and has not been willing to negotiate a settlement of the company's claims. Another U.S. company has suffered financial losses because it has been denied the ability to fully exercise its concession rights to finance operations and capital improvements at Costa Rica's international airport. Ongoing negotiations with the Costa Rican government continue in an effort to resolve these issues.

While electricity generation and distribution remain a state monopoly, an electricity cogeneration law enacted in 1996 allowed some private-sector participation 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.

OTHER BARRIERS

The law regulating commercial representatives of foreign firms (Law No. 6209) grants local companies exclusive representation, even without a signed agreement, for an indefinite period of time. In most cases, foreign companies must pay indemnity compensation in order to terminate a relationship with the local company. Under CAFTA-DR, Costa Rica has committed to change this "dealer protection" regime. Under the existing regime, foreign 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, which in turn will encourage the use of arbitration to resolve disputes between parties to dealer contracts.

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