

## DOMINICAN REPUBLIC

### TRADE SUMMARY

The U.S. trade surplus with the Dominican Republic was \$93 million in 2002, a decrease of \$121 million from \$214 million in 2001. U.S. goods exports in 2002 were \$4.3 billion, down 3.1 percent from the previous year. Corresponding U.S. imports from the Dominican Republic were \$4.2 billion, down 0.4 percent. Dominican Republic is currently the 26<sup>th</sup> largest export market for U.S. goods.

The stock of U.S. foreign direct investment (FDI) in the Dominican Republic in 2001 was \$752 million, down from \$813 million in 2000. U.S. FDI in the Dominican Republic is primarily in the petroleum and manufacturing sectors.

### IMPORT POLICIES

#### Tariffs

In December 2000, the Government of the Dominican Republic unilaterally lowered its maximum tariff on most items from 40 percent to 20 percent. These steps were taken in connection with Dominican commitments under free trade agreements with Central American and Caribbean countries. Tariffs on beef imports, however, were later raised from 25 percent to 40 percent.

#### Non-tariff Measures

The Government of the Dominican Republic imposes a selective consumption tax ranging from 15 percent to 60 percent on "nonessential" products such as home appliances, alcohol, perfumes, jewelry, automobiles and auto parts. The United States has raised concerns about the possible discriminatory effect of the application of this tax on distilled spirits, because the tax on cane-based spirits (nearly all of which is domestically produced) is 35 percent, while the tax assessed on non-cane based spirits (much of which is imported) is 45 percent. Additionally, U.S. companies have complained that the Dominican Republic applies a differential "adjustment factor," depending on the category of spirit, upon which the *ad valorem* consumption tax is levied.

Bringing goods through Dominican Customs can often be a slow and arduous process. Customs Department interpretations often provoke complaints by business persons, and arbitrary

clearance procedures sometimes delay the importation of merchandise for lengthy periods. Furthermore, the Dominican Government continues to require importers to obtain from a Dominican Consulate in the United States a consular invoice and "legalization" of documents, with attendant fees and delays. The use of "negotiated fee" practices to gain faster customs clearance continues to put some U.S. firms at a competitive disadvantage in the Dominican market.

The Dominican government implemented the WTO Agreement on Customs Valuation in July 2001 following a 16-month extension granted by the WTO Committee on Customs Valuation. It has notified its implementing legislation to the WTO. In October 2001, the Dominican Republic was granted a waiver that permits continued use of reference prices on over two dozen categories of goods until July 1, 2003.

Import permits are required for most agricultural products. The inability to apply for and receive import permits in a timely manner in the Dominican Republic for shipments of U.S. meat and dairy products has become a serious problem for U.S. export companies and Dominican importers. This is the result of a continuing policy by the General Directorate of Livestock within the Ministry of Agriculture to delay or reject applications for import permits, based on its assessment of market needs and the effect imports would have on domestic producers.

The trade-restrictive actions of the Livestock Directorate fall into two main areas: absorption requirements and lack of transparency.

#### *Absorption Requirements*

U.S. companies allege that the Livestock Directorate is requiring importers to purchase 25 percent of their requirements for turkeys from domestic sources, in order to receive import permits.

#### *Transparency*

The current process for granting import licenses appears to be arbitrary, with applications for licenses being rejected or subject to lengthy delays, with little or no explanation and no apparent basis in Dominican law. This is especially a problem for products with a short

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shelf life, such as yogurt, which could quickly pass its expiration date if delayed in port. Some U.S. companies have reported that they are no longer attempting to export to the Dominican Republic because of financial losses and frustration from previous attempts to obtain import permits.

U.S. companies have also expressed concern that the Dominican Dealer Protection Law 173, which applies only to foreign and not domestic suppliers, makes it extremely difficult to terminate contracts with local agents or distributors without paying exorbitant indemnities. Several U.S. companies have lost lawsuits brought under this law and have suffered significant financial penalties. This law has had a negative impact on market access and on consumer welfare in the Dominican Republic.

### STANDARDS, TESTING, LABELING AND CERTIFICATION

The Dominican Republic generally accepts U.S. certifications and standards. U.S. agricultural exports are sometimes subject to sanitary and phytosanitary measures that appear to be arbitrarily enforced and not based on science.

### GOVERNMENT PROCUREMENT

There is no explicit “buy national” policy; however, government procurement is often conducted without the benefit of open bidding. The processes by which contractors and/or suppliers are chosen are often opaque. The Dominican Republic is not a signatory of the WTO Agreement on Government Procurement. The U.S. has raised concerns regarding the Dominican Republic’s lack of cooperation in the WTO Working Party on Transparency in Government Procurement. As a result of these concerns, the U.S. has suspended a waiver of “Buy America Act” provisions that had previously been applied to the Dominican Republic.

### EXPORT SUBSIDIES

The Dominican Republic does not have aggressive export-promotion schemes other than the exemptions given to firms in the free trade zones. A tax rebate scheme designed to encourage exports is considered a failure and is not usually used by exporters.

An unusual oversupply situation occurred in the rice sector in 2002, and the Dominican

government has announced plans to export surpluses at subsidized prices. High domestic support prices have led to production that exceeds domestic demand, and the large surpluses are expensive for the Dominican government to maintain. The volumes of subsidized rice exported could reach 240,000 metric tons, and the net subsidy on exports as high as \$100 million.

### INTELLECTUAL PROPERTY RIGHTS (IPR) PROTECTION

Concerns that Dominican law does not provide adequate and effective protection of intellectual property rights exist particularly with respect to the trademark and patent regimes. Although the Dominican Republic has strong legislation to protect copyrights, it lacks resources for enforcement. The Dominican Republic was placed on the USTR Special 301 Priority Watch List in 1998, where it has remained due to continuing concerns about the apparent lack of TRIPS-consistent laws, and inadequate enforcement against piracy and counterfeiting.

#### Patents

Patent legislation passed in 2000 appears to fall considerably short of the requirements of TRIPS in several areas including inappropriate limitations on what inventions may be patented, and overly broad provisions related to compulsory licensing. The Dominican government has pledged to bring its intellectual property regime up to TRIPS standards, and the United States and Dominican governments have held consultations on these matters.

#### Copyrights

Despite a new, TRIPS-compliant copyright law passed in 2000 and some improvement in enforcement activity, piracy of copyrighted materials is still widespread. Video and audio recordings and software are being copied without authorization despite the government’s efforts to seize and destroy such pirated goods. The United States Government continues to receive serious reports of television and cable operators re-broadcasting signals without compensating either the original broadcaster or the originator of the recording.

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### SERVICES BARRIERS

Until recently, Dominican law restricted foreign participation in the financial services sector. In October 2002, the Dominican Republic recently passed a new monetary and financial law that provides for national treatment of investors in most of the financial services sector. The law's objective is to establish a regulatory regime for monetary and financial institutions, and it provides for the participation of foreign investment in financial intermediary activities in the Dominican Republic.

Although the Dominican Republic has not yet ratified the 1997 WTO Financial Services Agreement, formally known as the Fifth Protocol to the General Agreement on Trade in Services, the new monetary and financial law appears to go beyond the commitments of the Fifth Protocol. Under the Fifth Protocol, the Dominican Republic committed to allow foreign banks to establish branches or local companies with up to 49 percent foreign equity to supply deposit-taking, lending, and credit card services. Foreign investors could also own up to 49 percent equity in local suppliers of leasing and insurance service suppliers.

The Dominican Insurance Law requires that Dominican shareholders hold at least 51 percent of the shares of national insurance companies.

### INVESTMENT BARRIERS

Dominican legislation does not contain effective procedures for settling disputes arising from Dominican Government actions. Dominican expropriation standards do not appear to be consistent with international law standards; several investors have outstanding disputes related to expropriated property. Subsequent to U.S.-Dominican Trade and Investment Council meetings in October 2002, the Government recently examined outstanding expropriation cases for possible resolution through payment or issuance of government bonds under a 1999 law. The Government of the Dominican Republic was unable to resolve any of them, but committed to review the cases again after the relevant Dominican government agencies provide additional documents.

The Dominican Republic implemented the New York Convention on Recognition and Enforcement of Foreign Arbitral Awards (the New

York Convention) in August of 2002, which provides courts a mechanism to enforce international arbitral awards.

In 1999, capitalization of the state electric company left control of the distribution system and most of its generating capacity in private hands. In 2002, the Dominican government reached agreement to renegotiate most of the contracts with independent power producers (IPP) and established a new agreement with the distributors on collection and payment mechanisms, as well as rate structure. The new agreements further remove the government from direct involvement in generation and distribution. However, the Government of the Dominican Republic has not fully resolved arrears owed the various companies, and continues to have difficulty meeting its payment obligations to the remaining IPPs.

### OTHER BARRIERS

U.S. companies continue to complain about lack of transparency and corruption in all sectors. Lack of predictability in the judicial process also presents problems for U.S. companies seeking to resolve contract disputes.