# COSTA RICA

## TRADE SUMMARY

The U.S. goods trade deficit with Costa Rica was $4.8 billion in 2012, up $788 million from 2011. U.S. goods exports in 2012 were $7.2 billion, up 18.7 percent. Corresponding U.S. imports from Costa Rica were $12.0 billion, up 19.0 percent. Costa Rica is currently the 37th largest export market for U.S. goods.

The stock of U.S. foreign direct investment (FDI) in Costa Rica was $1.5 billion in 2011 (latest data available), roughly the same as in 2010. U.S. FDI in Costa Rica is primarily in the manufacturing sector.

### Free Trade Agreement

The Dominican Republic-Central America-United States Free Trade Agreement (CAFTA-DR or "Agreement") entered into force for the United States, El Salvador, Guatemala, Honduras, and Nicaragua in 2006 and for the Dominican Republic in 2007. The CAFTA-DR entered into force for Costa Rica on January 1, 2009. The CAFTA-DR significantly liberalizes trade in goods and services as well as includes important disciplines relating to customs administration and trade facilitation, technical barriers to trade, government procurement, investment, telecommunications, electronic commerce, intellectual property rights, transparency, and labor and environmental protection.

The United States hosted a Free Trade Commission (FTC) meeting on January 23, 2012 in Miami. At that meeting the CAFTA-DR countries recognized continued growth in trade and integration, and acted to further strengthen CAFTA-DR institutions and initiatives.

In 2012, the Parties implemented changes to a number of the Agreement's rules of origin for textile and apparel goods to enhance the competitiveness of the region's textiles sector. The changes to these rules of origin were made pursuant to a Decision of the first FTC meeting in February 2011, and are aimed at facilitating regional sourcing and encouraging greater integration of the textile and apparel supply chain in the region. The new rules became effective on October 13, 2012, after the other CAFTA-DR countries had completed their respective domestic procedures, and the U.S. Congress passed legislation implementing the changes for the United States.

## IMPORT POLICIES

### Tariffs

As a member of the Central American Common Market, Costa Rica applies a harmonized external tariff on most items at a maximum of 15 percent with some exceptions.

Under the CAFTA-DR, however, 100 percent of U.S. consumer and industrial goods will enter Costa Rica duty free by 2015. Nearly all textile and apparel goods that meet the Agreement's rules of origin now enter Costa Rica duty free and quota free, creating economic opportunities for U.S. and regional fiber, yarn, fabric, and apparel manufacturing companies.

Under the CAFTA-DR, more than half of U.S. agricultural exports now enter Costa Rica duty free. Costa Rica will eliminate its remaining tariffs on virtually all agricultural products by 2020 (2022 for chicken leg quarters and 2025 for rice and 2028 for dairy products). For certain agricultural products, tariff-rate quotas (TRQs) will permit some duty-free access for specified quantities during the tariff phase-out period, with the duty-free amount expanding during that period. Costa Rica will liberalize trade in fresh potatoes and onions through continual expansion of a TRQ, rather than by the reduction of the out-of-quota tariff.

### Nontariff Measures

Under the CAFTA-DR, all CAFTA-DR countries, including Costa Rica, committed to improve transparency and efficiency in administering customs procedures, including the CAFTA-DR rules of origin. The CAFTA-DR countries also committed to ensuring greater procedural certainty and fairness in the administration of these procedures, and agreed to share information to combat illegal trans-shipment of goods.

Costa Rica implemented the Information Technology Customs Control (TICA) system in 2007 for imports and in early 2009 for exports (other than exports from free trade zones). The TICA system has significantly improved what had been a complex and bureaucratic import process, but it was reported to have suffered system-wide breakdowns in 2012 as the volume of entries increased. Under the TICA system, the Costa Rican customs authority has changed its focus from the verification of goods to the verification of processes and data. Customs officials now have up to four years to review the accuracy of import declarations, which allows customs to facilitate the free flow of goods while gathering necessary documentation.

Costa Rica has ratified the "Hague Convention Abolishing the Requirement for Legalization of Foreign Public Documents" or "Apostille Convention," to which the United States is also a party. With implementation of this agreement on December 14, 2011, official documents originating in the United States are subject to a single act of authentication, which is expected to facilitate paperwork for commerce between the United States and Costa Rica.

## GOVERNMENT PROCUREMENT

The CAFTA-DR requires that procuring entities use fair and transparent procurement procedures, including advance notice of purchases and timely and effective bid review procedures, for procurement covered by the Agreement. Under the CAFTA-DR, U.S. suppliers are 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 anticorruption provisions in the Agreement require each government to ensure under its domestic law that bribery in matters affecting trade and investment, including in government procurement, is treated as a criminal offense or is subject to comparable penalties.

The government of Costa Rica's "Digital Government" development group, currently a division of the Costa Rican Electricity Institute, is well advanced in implementing an automated procurement system dubbed "MerLink." MerLink is streamlining procurement procedures and should significantly reduce the risk of corruption or fraud in the procurement process. Even though the central government ministries have not yet begun using MerLink, a growing number of local government entities (56 in a recent count) are conducting procurement processes online. For example, in July 2012, MerLink representatives announced an agreement to jointly procure car tires on behalf of four large agencies (the electricity institute (ICE), the state insurance provider (INS), the tourism institute (ICT) and the Post Office) and stated that while this is Merlink's first joint procurement agreement, there is potential for similar joint procurements in the future.

Some U.S. company representatives have commented that they find it difficult to compete with domestic suppliers in Costa Rican government procurement because bids are often due within three weeks to six weeks of the procurement announcement. U.S. companies interpret this as Costa Rica's reluctance to attract foreign bidders to its government procurement processes.

Costa Rica is not a signatory to the WTO Agreement on Government Procurement.

## 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 that are conditioned on the fulfillment of a performance requirement (*e.g.*, the export of a given level or percentage of goods). However, under the CAFTA-DR, Costa Rica was permitted to maintain such measures through 2009, provided that it maintained the measures in accordance with its obligations under the WTO Agreement on Subsidies and Countervailing Measures. The U.S. Government is working with the government of Costa Rica in an effort to ensure compliance with its CAFTA-DR obligations.

## INTELLECTUAL PROPERTY RIGHTS PROTECTION

Costa Rica was again listed on the Watch List in the 2012 Special 301 report. Key concerns include Costa Rica's need to place a higher priority on intellectual property rights (IPR) protection, to devote more resources to IPR enforcement efforts and impose deterrent penalties. The current Costa Rican Attorney General's office has indicated an intention to pursue IPR crimes more forcefully than in the past. The United States looks forward to seeing a corresponding improvement in IPR enforcement and will continue to monitor Costa Rica's implementation of its IPR obligations under the CAFTA-DR.

## SERVICES BARRIERS

### Insurance

Costa Rica's state-owned insurance provider, the National Insurance Institute (INS), no longer operates as a monopoly. Ten private companies are operating in the market, including U.S. companies. The new market entrants continue to face challenges in light of INS' market power as a result of its former monopoly position. In addition, the regulatory regime is not fully developed, which has resulted in delays as new market entrants seek authorization to operate in the market. Specific concerns relate to deceptive advertising by the former monopoly, a cumbersome and nontransparent product approval process, and the potential extension of preexisting exclusivity contracts between INS and insurance retailers designated as "agents."

### Telecommunications

Since the 2009 entry into force of the CAFTA-DR in Costa Rica, Costa Rica has progressively opened important segments of its telecommunications market, including private network services, Internet services, and mobile wireless services, which are now formally open for competition as a matter of law or regulation. However, while this market opening is a notable achievement, Costa Rica's new wireless service providers continue to face obstacles, including reluctance by some municipal governments to approve cell tower construction necessary to support new providers. Furthermore, a company that had been seeking to provide Internet services via satellite since Costa Rica implemented its obligations under

CAFTA-DR was subjected to a lengthy and onerous regulatory review and only very recently was able to obtain the required license authorization from Costa Rica's telecommunications regulator, the *Superintendencia de Telecomunicaciones*, and the telecommunications ministry. Industry claims that competition in Costa Rica's mobile telephony market is hindered by a still under-developed regime to ensure that operators are able to share certain microwave links that are needed to connect base stations to towers throughout the country.

**INVESTMENT BARRIERS**

The regulatory environment can pose significant barriers to successful investment in Costa Rica. One common problem is inconsistent government action, between institutions within the central government or between the central government and municipal governments. Another concern for U.S. investors is the frequent recourse to legal challenges before Costa Rica's constitutional court to review whether government authorities have acted illegally or to review the constitutionality of legislation or regulations. Some U.S. investors believe that such challenges have been used at times to undermine their investments or hinder the quick resolution of disputes. Consequently, some investors use the phrase "judicial insecurity" to describe their predicament in Costa Rica, despite Costa Rica's relatively robust legal protections.

**OTHER BARRIERS**

Some U.S. firms and citizens have found corruption in government, including in the judiciary, to be a concern and a constraint to successful investment in Costa Rica. Administrative and judicial decision-making appear at times to be inconsistent, nontransparent, and very time consuming.

In July 2009, Costa Rica notified levels of agricultural domestic support to the WTO that in 2007 were above its $15.9 million Total Aggregate Measurement of Support (TAMS) ceiling on trade-distorting domestic support. Costa Rica's subsequent notifications to the WTO for the years 2008 through 2011 listed domestic support expenditures at ever increasing levels, reaching $104.5 million in 2011. Between 2008 and 2011, Costa Rica's price support for rice accounted for all of its notified TAMS, and rice accounted for a majority of its notified TAMS prior to 2008. During this time period, Costa Rica's domestic production of rice has increased. U.S. rice exports to Costa Rica have dropped by over 50 percent in 2011 as compared to 2006. In November 2010, the government of Costa Rica attempted to reform its rice support policy and reduced the support price. While positive, it was insufficient to bring Costa Rica's support level down to its WTO ceiling, and was subsequently overturned by a Costa Rican court. The government of Costa Rica has appealed the court's decision. Given this situation, the United States is considering all options for addressing this issue.

As the Costa Rican government has increased tax collection efforts in recent years, several U.S. companies have found themselves facing what they consider to be novel interpretations of tax regulations and principles as they apply to international trade. While a number of the current cases have been resolved or appear to be on reasonable paths to resolution, they illustrate the increasing level of bureaucratic challenges facing foreign business in dealing with Costa Rican tax authorities.