COSTA RICA

TRADE SUMMARY

U.S. goods exports in 2013 were $7.2 billion, roughly the same as the previous year. Corresponding U.S. imports from Costa Rica were $11.9 billion, down 1.1 percent. The U.S. goods trade deficit with Costa Rica was $4.7 billion in 2013, down $135 million from 2012. 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 $1.7 billion in 2012 (latest data available), down from $1.9 billion in 2011. 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 in 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 environment.

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 U.S. agricultural products by 2020 (2022 for chicken leg quarters; 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. 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 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. Official documents originating in the United States are now subject to a simplified authentication process, which has facilitated paperwork for commerce between the United States and Costa Rica.

Costa Rica’s Information Technology Customs Control (TICA) system, implemented in 2007 for imports and in early 2009 for exports, has suffered system-wide breakdowns as the volume of entries increased. TICA has been acknowledged by the government of Costa Rica to be badly flawed and in need of replacement. Although some have argued that TICA is still one of the best customs systems in Central America, Costa Rica’s ability to facilitate import and export of goods without unjustifiable delay clearly depends upon rapid development and installation of a new “TICA2” customs system.

When asked to approve cosmetics and toiletries items for registration in Costa Rica, the Costa Rican Ministry of Health requires a Good Manufacturing Practices (GMP) certificate. Manufacturers from the United States cannot comply with the Ministry of Health requirement because a U.S. Government certificate of this kind does not exist. Companies from other countries outside the Central American region have had similar problems. U.S. companies have, in some cases, been able to comply with the requirement by submitting documents from state or local authorities or trade organizations; however, this results in inconsistent and discriminatory treatment towards U.S. manufacturers unable to obtain such documents. In one recent case, the issue persists despite repeated attempts at dialogue and a formal letter from Global Markets (formerly United States Commercial Service) clarifying that the U.S. Government does not issue the GMP certificate. In this particular case, the U.S. company reported $1,000,000 in lost sales during the first half of 2013 because of its inability to register and stock a particular cosmetic product.

Costa Rica has set a presumed profit level of 40 percent for imports of carbonated beverages and levees a value-added tax (VAT) on that profit, while presuming a lower profit level of 25 percent for domestic carbonated beverages. Hence, imported carbonated beverages suffer a significantly higher tax burden than competing local carbonated beverages. In one ongoing case, an affected U.S. stakeholder formally appealed to the Costa Rican tax authority in late 2012, arguing that this treatment violated Costa Rica’s international obligations to ensure national treatment.

In January 2004, Costa Rica introduced a specific excise tax system for spirits that is calculated on a per percent of alcohol per liter basis, with a lower rate per percentage of alcohol on alcoholic beverages that are typically produced locally (Ley 7972). The local spirit, guaro, (which is produced in largest volume by the state-owned alcohol company) is assessed an excise tax of 30 percent alcohol-by-volume (a.b.v.), while the vast majority of internationally traded spirits, such as whiskey and gin, are assessed at a rate of 40 percent a.b.v.

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.

A September 2013 decree provided that the automated government procurement system, called Mer-link, will be the only procurement system within the Costa Rican central government. Mer-link will eventually be adopted widely throughout the government. The administration reinforced this message with its November 2013 adoption of the World Bank's open contracting principles. Mer-link has been running successfully for three years in a small group of agencies, providing a single purchasing platform for all participating ministries with an entirely paperless procurement process based on a secure database, allowing enhanced levels of transparency and competition in the procurement process. Mer-Link and open contracting should significantly reduce the risk of corruption or fraud in Costa Rican government procurement.

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 to six weeks of the procurement announcement. U.S. companies interpret this as reflecting 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

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). Costa Rica has modified its free trade zone regime in order to conform to this requirement. While tax holidays are available for investors in free trade zones, sources have expressed concern that the Ministry of Foreign Trade (COMEX) exercises significant discretionary power using undefined criteria in determining what investors qualify for Free Trade Zone status.

INTELLECTUAL PROPERTY RIGHTS PROTECTION

Costa Rica was again on the Watch List in the 2013 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 United States engaged extensively with Costa Rica as it prepared legislative amendments governing protections for geographical indications (GIs), in anticipation of action on applications from the European Union, which were received in 2013, to register a range of GIs in Costa Rica. During that ongoing engagement, the United States has stressed the need for use of CAFTA-DR consistent protections and processes, including providing public notice and opportunity for opposition and cancellation, and transparency and impartiality in decision making. The United States will continue to monitor Costa Rica's implementation of its IPR obligations under the CAFTA-DR.

SERVICES BARRIERS

Insurance

Costa Rica's state-owned former monopoly insurance provider, the National Insurance Institute (INS), competes in an increasingly dynamic and crowded market. Ten private companies, including U.S. companies, are operating in most segments of the market. The exceptions are the so-called obligatory insurance categories – worker's compensation and basic automobile liability – which are open to new entrants, but are still serviced only by INS. New market entrants continue to face challenges in light of the market power INS derives from its former monopoly position. Specific concerns relate to deceptive advertising by the former monopoly, a cumbersome and nontransparent product approval process, and the extension of exclusivity contracts between INS and insurance retailers designated as agents.

Telecommunications

Since the 2009 entry into force of the CAFTA-DR, 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. As of December 1, 2013, the Costa Rican telecommunication consumer is guaranteed the opportunity to switch mobile service providers while retaining the same cell phone number; this number portability heightens competition among mobile service providers by facilitating the transfer process for consumers. The telecommunication market has grown, with revenue jumping from 1.1 percent of GDP in 2010 to 2.4 percent of GDP in 2013. 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 and expand coverage areas. Furthermore, a company that had been seeking to provide Internet services via satellite was subjected to a lengthy and onerous regulatory review and is still pursuing permission to operate in Costa Rica.

INVESTMENT BARRIERS

The regulatory environment can pose significant barriers to successful investment in Costa Rica. One common problem is inconsistent action between institutions within the central government or between the central government and municipal governments. This results in an unnecessarily lengthy process that is especially noticeable in infrastructure projects which can languish for years between the award of a tender and the start of project construction. A project critical to facilitating trade, a private-public partnership to build a new container terminal at Costa Rica's main Atlantic port, remains stalled. The delays have postponed the start of construction on the terminal by more than one year and cost the investing private company more than $100 million to date.

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 ascertain the constitutionality of legislation or regulations. Some U.S. investors believe that such challenges have been used at times to undermine their investments or draw out the dispute. 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 for 2007 that 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. In 2012, domestic support expenditures dropped to $81.5 million, still well above Costa Rica's WTO ceiling. Between 2008 and 2012, 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. Between 2007 and 2013, Costa Rica's domestic production of rice has increased while U.S. rice exports to Costa Rica have dropped by 54 percent. In May 2013, the government of Costa Rica issued Decree #37699-MEIC, which reduced the price support by a modest amount and stated that the current price support mechanism for rice would be eliminated starting in March 2014. However, in January 2014, Costa Rica delayed that deadline by a year until March 2015.

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 or inconsistent interpretations of tax regulations and principles. While a number of the current cases have been resolved or appear to be on the path to resolution, they illustrate the level of bureaucratic challenges facing foreign business in dealing with Costa Rican tax authorities. Recent adoption of a new set of transfer-pricing regulations in September 2013 represents a very significant advance by the Costa Rican government in the area of transparency and predictability. The United States will continue to monitor implementation of the new regulation.