# COSTA RICA

## TRADE SUMMARY

The U.S. goods trade surplus with Costa Rica was $288 million in 2006, an increase of $105 million from $183 million in 2005. U.S. goods exports in 2006 were $4.1 billion, up 14.8 percent. Corresponding U.S. imports from Costa Rica were $3.8 billion, up 12.63 percent. Costa Rica is currently the 35th largest export market for U.S. goods.

The stock of U.S. foreign direct investment in Costa Rica in 2005 was $1.3 billion (latest data available), up from $1.1 billion in 2004. 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 have ratified the agreement, with the exception of Costa Rica. The agreement has entered into force for the Dominican Republic, Guatemala, Honduras, El Salvador and Nicaragua.

Consideration of the CAFTA-DR by the foreign relations committee of Costa Rica's legislative assembly has been under way since October 2005. Formal testimony before the committee concluded in October 2006, and the CAFTA-DR was voted favorably out of committee on December 12, 2006. Ratification of the CAFTA-DR is expected during 2007. The Arias administration also has submitted to the assembly the legislation necessary to implement the CAFTA-DR, such as proposed laws to open gradually the telecommunications and insurance markets, and to provide greater protections for intellectual property rights.

When implemented, the CAFTA-DR will remove barriers to trade and investment in the region and strengthen regional economic integration. The CAFTA-DR also requires the Central American countries and the Dominican Republic to undertake reforms to provide market liberalization as well as transparency and certainty in a number of areas, including: customs administration, protection of intellectual property rights, services, investment, financial services, government procurement, and sanitary and phytosanitary (SPS) measures.

### Tariffs

As a member of the Central American Common Market, Costa Rica agreed in 1995 to reduce its common external tariff to a maximum of 15 percent. However, some goods, such as new and used automobiles, are subject to much higher tariffs. When the CAFTA-DR enters into force with respect to Costa Rica, about 80 percent of U.S. industrial goods will enter Costa Rica 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 companies.

Most tariffs on agricultural products range from 1 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: frozen french fries (40 percent), fresh potatoes (46 percent), dehydrated potatoes (up to 90 percent), dairy products (40 percent to 65 percent) and poultry products (up to 150 percent). Under the CAFTA-DR, when the agreement enters into force, more than half of U.S. agricultural exports to Costa Rica will be duty-free immediately. Costa Rica will eliminate its remaining tariffs on virtually all agricultural products within 15 years (17 years for chicken leg quarters and 20 years for rice and dairy products). For the most sensitive products, tariff-rate quotas (TRQs) will permit some immediate duty-free access for specified quantities during the tariff phase-out period, with the duty-free amounts expanding during that period. Costa Rica will liberalize trade in fresh potatoes and onions through expansion of an existing TRQ, rather than by tariff reductions.

The agreement will also require transparency and efficiency in administering customs procedures, including the agreement's rules of origin. Under the CAFTA-DR, Costa Rica has committed to ensure greater certainty and fairness in the administration of these procedures, and all CAFTA-DR countries 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 in 2000 and other more recent improvements have reduced the time required for customs processing in Costa Rica. Nonetheless, procedures remain complex and bureaucratic.

Under current regulations, Costa Rica does not require testing prior to selling food products. The Ministry of Health must test and register domestically-produced or imported pharmaceuticals, feeds, chemicals and cosmetics before they can be sold in Costa Rica. As implemented, however, this system appears to be enforced more rigorously on imported goods than on domestically-produced goods. For example, domestic products 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 length of time it takes to register a product under this process, which can take 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 requirements are burdensome and costly to U.S. exporters. The five Central American countries, including Costa Rica, are in the process of developing common standards for the importation of 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 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).

Legislation passed in 2005 creating a national animal health service provides statutory authority for Costa Rica to undertake an equivalency determination to recognize the equivalence of the U.S. food safety and inspection system for meat and poultry. Current requirements call for the approval of individual meat and poultry plants as a prerequisite for exporting to Costa Rica. Costa Rica has committed to complete its equivalence determination prior to the entry into force of the CAFTA-DR.

## GOVERNMENT PROCUREMENT

Costa Rica is not a signatory to the World Trade Organization (WTO) Agreement on Government Procurement. In recent years, a growing number of U.S. exporters and investors have reported unsatisfactory experiences in participating in Costa Rican government procurements. For example, the Costa Rican government, through its Comptroller General, has occasionally annulled contract awards and required government agencies to re-bid tenders to supply large state-owned enterprises. The Costa Rican government 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.

The CAFTA-DR, when it enters into force with respect to Costa Rica, will require 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. Under the CAFTA-DR, U.S. suppliers will be permitted to bid on the procurements of most Costa Rican government entities, including state-owned enterprises, on the same basis as Costa Rican suppliers. The anti-corruption provisions in the agreement will require each government to ensure under its domestic law that bribery in trade-related matters, including in government procurement, is treated as a criminal offense or is subject to comparable penalties.

## 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 the CAFTA-DR, Costa Rica has committed to 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 intellectual property laws. Consequently, Costa Rica remained on the 2006 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, including minimum amounts in damages necessary to justify imprisonment, that limit effective deterrence of intellectual property crimes. 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, a lack of political will to aggressively prosecute IPR violators, frequently attributed to scarce resources, has undercut deterrence.

Costa Rica is considering changes to its existing IPR laws to address limitations and loopholes that currently prevent effective enforcement. Several proposals to strengthen IPR laws have languished in the legislative assembly during the past two years. These and other IPR reforms will be needed to comply with the requirements of the CAFTA-DR and will strengthen Costa Rica's IPR protection regime. Implementation of CAFTA-DR obligations also will provide stronger deterrence against piracy and counterfeiting by, for example, 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. The CAFTA-DR will also mandate 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, Data Protection and Plant Protection**

Costa Rica acceded to the Paris Convention for the Protection of Industrial Property in 1995. Amendments made to the patent law 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.

Implementation of the CAFTA-DR obligations will require Costa Rica to protect data submitted for regulatory approval against unfair commercial use for a period of five years following the issuance of marketing approval for pharmaceuticals and ten years for agricultural chemicals.

CAFTA-DR obligations will require that Costa Rica accede to the UPOV Convention (International Union for the Protection of New Varieties of Plants, 1991) and make best efforts to provide patent protection for plants.

**Copyrights**

Costa Rica's copyright law is 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 a 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 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 intellectual property enforcement.

CAFTA-DR enforcement provisions are designed to help reduce copyright piracy.

**Trademarks**

The sale of imported counterfeit reproductions of well known trademarks is common 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.

## SERVICES BARRIERS

Costa Rica's insurance, telecommunications, electricity distribution, petroleum distribution and railroad sectors 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, ferry service, prison operation and professional services. Under the CAFTA-DR, when the agreement enters into force with respect to Costa Rica, Costa Rica will accord substantial market access across the country's entire services sector, subject to a few exceptions. For example, liberalization in insurance will be achieved through a phased-in approach with an initial, limited opening at entry into force, an opening of the vast majority of the market by 2008 and a total opening by 2011. Costa Rica also agreed to the establishment of an independent insurance regulatory body. This will require further legislative and regulatory reform.

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 and teachers. Such professionals must be members of a local association that sets residency, examination and apprenticeship requirements. However, under the CAFTA-DR, Costa Rica has 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 and competition. Under the CAFTA-DR terms that anticipated timely agreement ratification, certain telecommunications market segments in Costa Rica were to have opened up gradually, beginning with private network services on January 1, 2006; Internet services and wireless services were to have followed on January 1, 2007. However, since the CAFTA-DR did not enter into force with respect to Costa Rica by those dates, Costa Rica will provide such market openings as soon as the agreement enters into force.

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 foreign-owned bank subsidiaries not registered as Costa Rican companies in Costa Rica to provide lending and deposit-taking services, leasing services, credit card services, and financial information services. The Costa Rican insurance monopoly will be privatized in a phased approach to give U.S. insurance suppliers full access to the market by 2011.

Costa Rica made no commitments in the WTO for the provision of securities trading, for underwriting services, nor for any type of insurance services. The CAFTA-DR, however, provides for liberalization in all these areas (with insurance sector liberalization to be phased-in as noted above). 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.

## INVESTMENT BARRIERS

The CAFTA-DR establishes a more secure and predictable legal framework for U.S. investors operating in Costa Rica. Under the CAFTA-DR, all forms of investment are protected, including enterprises, debt, concessions, contract and intellectual property. Upon implementation of the CAFTA-DR, 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 the CAFTA-DR will afford 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. Investor rights will be protected under the CAFTA-DR by an effective, impartial procedure for dispute settlement that is fully transparent and open to the public. Submissions to dispute panels and dispute panel hearings will be open to the public, and interested parties will have the opportunity to submit their views.

Several U.S. investors have experienced minor difficulties executing contracts made with the Costa Rican government. While electricity distribution remains a state monopoly, an electricity co-generation 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 and build-lease-transfer mechanisms, but the operator must have at least 35 percent Costa Rican equity. 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. A U.S.-led airport management consortium has maintained that the terms of its concession agreement have been repeatedly altered by the Costa Rican government.

## 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 the 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.

## ELECTRONIC COMMERCE

The CAFTA-DR includes provisions on electronic commerce that reflect its importance to global trade. Under the CAFTA-DR, when the agreement enters into force with respect to Costa Rica, Costa Rica will be obligated to provide non-discriminatory treatment to U.S. digital products, not to impose customs duties on digital products transmitted electronically and to work together with the United States in policy areas related to electronic commerce.