COSTA RICA

TRADE SUMMARY

The U.S. goods trade surplus with Costa Rica was $638 million in 2007, an increase of $349 million from 2006. U.S. goods exports in 2007 were $4.6 billion, up 10.9 percent. U.S. imports from Costa Rica over the corresponding period were $3.9 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 was $1.6 billion in 2006 (latest data available), up from $1.3 billion in 2005. U.S. FDI in Costa Rica is concentrated largely in the manufacturing and wholesale trade sectors.

IMPORT POLICIES

Free Trade Agreement

On August 5, 2004, the United States signed the Dominican Republic–United States–Central America Free Trade Agreement (CAFTA-DR or Agreement) with five Central American countries (Costa Rica, El Salvador, Guatemala, Honduras, and Nicaragua) and the Dominican Republic.

During 2006, the Agreement entered into force for the United States, El Salvador, Guatemala, Honduras, and Nicaragua. The CAFTA-DR entered into force for the Dominican Republic on March 1, 2007. Costa Rica approved the CAFTA-DR through a national referendum on October 7, 2007, but the Agreement has not entered into force for Costa Rica as it has not yet completed the process of adopting implementing legislation and regulations.

In 2007, the Parties agreed to amend several textile related provisions of the CAFTA-DR, in particular, changing the rules of origin to require the use of U.S. or regional pocket bag fabric in originating apparel. The textile amendments have not entered into force.

Under the Agreement, the Parties remove barriers to trade and investment in the region, which will strengthen regional economic integration. The CAFTA-DR also 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.

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.

When the CAFTA-DR enters into force with respect to Costa Rica, about 80 percent of U.S. industrial and consumer goods will enter Costa Rica duty free immediately, with the remaining tariffs on these goods (including tariffs on distilled spirits) phased out over 10 years. Nearly all textile and apparel goods that meet the Agreement's rules of origin will enter 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), dairy products (40 percent to 65 percent), and poultry products (up to 150 percent). 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 certain 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 Parties will also improve transparency and efficiency in administering customs procedures, including application of 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 the CAFTA-DR countries agreed to share information to combat illegal transshipment of goods.

Nontariff Measures

The establishment of an electronic, "one-stop," import-export window in year 2000 and other more recent improvements has reduced the time required for customs processing in Costa Rica. Nonetheless, procedures remain complex and bureaucratic.

STANDARDS, TESTING, LABELING, AND CERTIFICATION

Under current regulations, 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. Domestic products are often not subjected to analysis due to a lack of adequate laboratory testing equipment and funds. As implemented, this system appears to be enforced more rigorously on imported goods than on domestically produced goods. Regulations exist for imported goods but they vary widely depending on when the regulations were written. In general, the newer the regulation, the more likely that it may reflect current accepted international standards, including safety practices.

In addition, Costa Rica requires that all imported products be certified as 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. As an example, Costa Rica requires extensive documentation to be notarized by the Costa Rican consulate in the country of origin for the importation of distilled spirits. The delays associated with fulfillment of these import requirements are burdensome and costly to U.S. exporters. Costa Rica and the other Central American countries are in the process of developing common standards for the importation of several products, including distilled spirits, which may 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 the differences do not appear to be based on science (*e.g.*, zero tolerance for Salmonella on raw meat and poultry products). Also, while Costa Rica has opened market access for U.S. live cattle and boneless beef from animals less than 30 months of age, they maintain restrictions on other beef products, including bone-in beef.

Costa Rica signed the Cartagena Protocol on Biosafety in May 2000. Costa Rica has implemented legislation to regulate the import and cultivation of bioengineered crops. This legislation includes a labeling requirement for genetically modified organisms in agriculture, but there is currently no labeling requirement for processed foods containing the products of biotechnology. Costa Rica has permitted cultivation of transgenic seeds for multiplication purposes since 1992. These seeds must be exported and cannot be cultivated as a crop in Costa Rica.

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 systems 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 when CAFTA-DR enters into force for Costa Rica.

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 rebid tenders to the advantage of 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 procuring entities to 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 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 anticorruption provisions in the Agreement will require Costa Rica 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.

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. In 2000, Costa Rica ceased granting financial investment subsidies and tax holidays to new exporters.

Under the CAFTA-DR, Costa Rica has committed not to adopt new duty waivers or expand existing duty waivers that are conditioned on the fulfillment of a performance requirement (*e.g.*, the exportation of a given level or percentage of goods). However, under the CAFTA-DR, Costa Rica is permitted to maintain such measures through 2009, provided that it maintains the measures in accordance with its obligations under the WTO Agreement on Subsidies and Countervailing Measures.

INTELLECTUAL PROPERTY RIGHTS (IPR) PROTECTION

The United States continues to have concerns over Costa Rica’s inadequate enforcement of intellectual property laws. Consequently, Costa Rica remained on the 2007 Special 301 Watch List. While many elements of Costa Rica’s intellectual property laws appear to be in line with international standards, enforcement remains very weak. Initiatives, including the formation of an intergovernmental 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. Deterrence is further undermined as IPR violators are not aggressively prosecuted by the Attorney General of Costa Rica, a fact that is frequently attributed to scarce resources.

Costa Rica’s patent office continues to experience significant delays in processing applications, but has tried to remedy that problem by contracting technical patent reviews with two of Costa Rica’s educational institutions. Long delays in copyright enforcement cases continue to be a serious problem. 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. Previous efforts to reduce their presence in the market have not continued over the last year.

In order to implement the CAFTA-DR, Costa Rica must make changes to its existing IPR laws and regulations to address limitations that currently prevent effective enforcement. These changes must be in place for the Agreement to enter into force. These and other IPR reforms will strengthen Costa Rica’s IPR protection regime.

Implementation of the CAFTA-DR obligations will provide stronger deterrence against piracy and counterfeiting by, for example, requiring Costa Rica to provide that its judicial authorities have the authority to order 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. Implementation will require Costa Rica to protect data submitted for regulatory approval against unfair commercial use for a period of 5 years following the issuance of marketing approval for pharmaceuticals and 10 years for agricultural chemicals. Finally, the CAFTA-DR obligations will require that Costa Rica accede to the UPOV Convention (International Convention for the Protection of New Varieties of Plants, 1991), the Budapest Treaty on the International Recognition of the Deposit of Microorganisms for the Purposes of Patent Procedure, and the Trademark Law Treaty, as well as make all reasonable efforts to provide patent protection for plants.

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. 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. Costa Rica will liberalize a significant portion of its insurance market when the Agreement enters into force. The remainder of Costa Rica’s market will be opened by 2011. Costa Rica also agreed to the establishment of an independent insurance regulatory body.

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 in the CAFTA-DR to open its telecommunications market in three key telecommunications services activities (private network, Internet, and mobile wireless services) and to establish a regulatory framework to foster effective market access and competition. Under the CAFTA-DR, certain telecommunications market segments in Costa Rica were to open 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 when the Agreement enters into force.

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, provides for liberalization in all these areas. 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. Under the CAFTA-DR, foreign banks must be 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, contracts, 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 fair market value for property in the event of an expropriation. Investor rights will be protected under the CAFTA-DR by an 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 difficulties executing contracts made with the Costa Rican government. While electricity distribution remains 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 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 United States 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 existing regime, foreign firms may be tied to exclusive or inefficient distributor arrangements. In the CAFTA-DR, 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. In December 2007, Costa Rica enacted Law 8629, which is intended to implement this commitment. The legislation will take effect when the CAFTA-DR enters into force for Costa Rica.

ELECTRONIC COMMERCE

The CAFTA-DR includes provisions on electronic commerce that reflect the 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 nondiscriminatory treatment to U.S. digital products, and not to impose customs duties on digital products transmitted electronically.