COSTA RICA

TRADE SUMMARY

The U.S. goods trade surplus with Costa Rica was $1.7 billion in 2008, an increase of $1.1 billion from $639 million in 2007. U.S. goods exports in 2008 were $5.7 billion, up 24.0 percent. Corresponding U.S. imports from Costa Rica were $3.9 billion, down 0.1 percent. Costa Rica is currently the 38th largest export market for U.S. goods.

The stock of U.S. foreign direct investment (FDI) in Costa Rica was $3.5 billion in 2007 (latest data available), up from $3.3 billion in 2006. 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-Central America-United States Free Trade Agreement (CAFTA-DR or Agreement) with five Central American countries (Costa Rica, El Salvador, Guatemala, Honduras, and Nicaragua) and the Dominican Republic (the Parties). Under the Agreement, the Parties are significantly liberalizing trade in goods and services. 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.

The Agreement entered into force for the United States, El Salvador, Guatemala, Honduras, and Nicaragua in 2006. The CAFTA-DR entered into force for the Dominican Republic on March 1, 2007, and for Costa Rica on January 1, 2009.

In 2008, the Parties implemented amendments to several textile-related provisions of the CAFTA-DR, including, in particular, changing the rules of origin to require the use of U.S. or regional pocket bag fabric in originating apparel. The Parties also implemented a reciprocal textile inputs sourcing rule with Mexico. Under this rule, Mexico provides duty-free treatment on certain apparel goods produced in a Central American country or the Dominican Republic with U.S. inputs, and the United States will provide reciprocal duty-free treatment under the CAFTA-DR on certain apparel goods produced in a Central American country or the Dominican Republic with Mexican inputs. These changes will further strengthen and integrate regional textile and apparel manufacturing and create new economic opportunities in the United States and the region.

Tariffs

As a member of the Central American Common Market, Costa Rica agreed in 1995 to harmonize its external tariff on most items at a maximum of 15 percent with some exceptions.

Under the CAFTA-DR, about 80 percent of U.S. industrial and consumer goods now enter Costa Rica duty free, with the remaining tariffs on these goods phased out 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 dairy products). For certain agricultural 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 amount expanding during that period. Costa Rica will liberalize trade in fresh potatoes and onions through expansion of a TRQ, rather than by tariff reductions.

Nontariff Measures

Under the CAFTA-DR, Costa Rica committed to improve transparency and efficiency in administering customs procedures, including the CAFTA-DR rules of origin. Costa Rica also committed to ensuring greater procedural 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.

The establishment of the *Tecnología Informática para el Control Aduanero* (TICA) customs control system has significantly improved a traditionally complex and bureaucratic import process over the last year. 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. Under the TICA system, customs officials 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. The Costa Rican customs authority is now implementing the TICA system to process export documents as well.

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. As implemented, this system appears to be enforced more rigorously on imported goods than on domestically produced goods. Regulations exist for imported goods, but older regulations do not always reflect current accepted international standards, including safety practices. In general, the newer the regulation, the more likely it reflects current international standards.

Costa Rica and the other four Central American Parties to the CAFTA-DR are in the process of developing common standards for the importation of several products, including distilled spirits, which may facilitate trade.

Sanitary and Phytosanitary Measures

Costa Rica also requires that all imported food products be certified as safe and allowed for sale in the country of origin in order to be registered. Certificates are not available for all U.S. products, and traders have expressed concern regarding the length of time it takes to register a product under this process, which can take months. The delays associated with fulfillment of these import requirements are burdensome and costly to U.S. exporters.

The Ministry of Agriculture and Livestock enforces certain sanitary and phytosanitary (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).

Costa Rica ratified the Cartagena Protocol on Biosafety in November 2006, but additional regulations are needed for Costa Rica to implement the Protocol. To date, imports of U.S. products have not been affected and continue to be imported under previous conditions (*i.e.*, only a phytosanitary import certificate is required).

Costa Rica has recognized the equivalence of the U.S. food safety and inspection system for beef, pork, and poultry, thereby eliminating the need for plant-by-plant inspections of U.S. producers.

In August 2008, Costa Rica fully opened its market to all U.S. beef and beef products in line with the World Organization for Animal Health (OIE) guidelines for "controlled risk" countries for Bovine Spongiform Encephalopathy (BSE). The OIE categorized the United States as "controlled risk" for BSE in May 2007. Prior to August 2008, Costa Rica prohibited imports of U.S. bone-in beef from cattle of any age and some offals and variety meats. Costa Rica based its import prohibition on the 2003 discovery of a BSE positive animal in the United States.

In 2008, Costa Rica and the other four Central American Parties to the CAFTA-DR notified to the WTO a set of microbiological criteria for all raw and processed food products imported into any of these countries. The United States has some concerns with these criteria and in May 2008 submitted comments to the five countries. The Central American countries are currently evaluating possible amendments to the proposed criteria.

The U.S. Food and Drug Administration plans to open an office in San Jose, Costa Rica in 2009 to help improve bilateral and regional cooperation on food safety and SPS issues.

GOVERNMENT PROCUREMENT

In recent years, a growing number of U.S. exporters and investors have reported unsatisfactory experiences 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 technical specifications midway through the procurement process. The bidders in these procurements were forced to bear the costs of revising their tenders to meet the modified specifications.

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.

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 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

In 2008, the United States continued to have concerns with Costa Rica's inadequate IPR enforcement. Although 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. To date, initiatives including the formation of an intergovernmental IPR commission and the training of judges and prosecutors on IPR 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 and the higher priority that the Attorney General appears to have placed on prosecuting other types of criminal behavior.

Notwithstanding these and other concerns about IPR protection and enforcement, Costa Rica has taken significant steps to improve the protection and enforcement of IPR. Costa Rica strengthened its legal framework for the protection of IPR by substantially modifying its IPR laws and regulations in preparation for the entry into force of the CAFTA-DR. The CAFTA-DR provides for improved standards for the protection and enforcement of a broad range of IPR, which are consistent with U.S. and international standards, as well as with emerging international standards, of protection and enforcement of IPR. Such improvements include state-of-the-art protections for patents, trademarks, undisclosed test and other data submitted to obtain marketing approval for pharmaceuticals and agricultural chemicals, and digital copyrighted products such as software, music, text, and videos; and further deterrence of piracy and counterfeiting.

In late 2008, Costa Rica established a special prosecutor's office for IPR violations within the Office of the Attorney General. In addition, the government increased the budgets of the patent and trademark office and the copyright office. The number of trademark examiners has roughly tripled from 2006, and the number of trademarks registered has increased markedly. Patent registration continues to be problematic, as a program to contract-out technical patent reviews with two of Costa Rica's educational institutions has met with mixed success. However, a cooperative effort with the Pharmacists' Association has allowed many pharmaceutical patents to be registered, and five positions for in-house patent examiners with industry-competitive salaries have been opened and should soon be filled. Over three times the number of registered patents were issued in 2008 than in any of the previous three years. The copyright office has also tripled in personnel from 2006, and equipment has been upgraded.

SERVICES BARRIERS

Under the CAFTA-DR, Costa Rica granted U.S. services suppliers substantial access to its services market, including financial services. Costa Rica committed to provide improved access in sectors like express delivery and to grant new access in certain professional services that previously had been reserved exclusively to Costa Rican nationals. Costa Rica also agreed that portfolio managers in the United States would be able to provide portfolio management services to both mutual funds and pension funds in Costa Rica.

In 2008, Costa Rica made significant changes in its legal and regulatory framework intended to implement its CAFTA-DR commitments on insurance and telecommunications.

In particular, under the CAFTA-DR, Costa Rica has opened its insurance market, which previously was reserved for a state monopoly. U.S. insurance suppliers are now permitted to provide most forms of insurance, with the remainder of the market to be opened by 2011. U.S. insurance suppliers are able to operate as a branch or a subsidiary.

Under the CAFTA-DR, Costa Rica has also opened important segments of its telecommunications market, including private network services, Internet services, and mobile wireless services. Previously, Costa Rica's telecommunications market also was reserved for a state monopoly.

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. U.S. investors 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 afforded to U.S. investors are due process protection and the right to receive fair market value for property in the event of an expropriation. Investor rights are protected under the CAFTA-DR through 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.

The slow pace of Costa Rica's judicial system has been cited as a barrier by many U.S. investors. 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 thwart investments or hinder the quick resolution of disputes.

Several U.S. investors have complained of failures on the part of Costa Rican government entities to fulfill contractual commitments. For example, a United States-led airport management consortium and the lender of record maintain that the terms of its management/development agreement for San Jose's international airport have been repeatedly altered by the Costa Rican government. Unable to reach a resolution, the consortium and the government of Costa Rica agreed in 2008 to terminate the contract but also to extend the term of the contract until another entity is awarded the management/development rights for the airport. In late 2008, a U.S. company in conjunction with other international partners won the bid to negotiate with the government of Costa Rica. The Costa Rican government is close to concluding an agreement that would award the new consortium the management/development rights for San Jose's international airport. However, a decision by the government's rate-setting regulatory body (*i.e.*, lowering airport user fees) jeopardized the agreement until the same body reversed its position, resurrecting the agreement. Such action highlights the regulatory risk and uncertainty often associated with investment in Costa Rica.

ELECTRONIC COMMERCE

The CAFTA-DR includes provisions on electronic commerce that reflect its importance to global trade. Under the CAFTA-DR, Costa Rica has committed to provide nondiscriminatory treatment of digital products, and not to impose customs duties on digital products transmitted electronically.

OTHER BARRIERS

Under the CAFTA-DR, Costa Rica agreed to modify its dealer protection regime to provide more freedom to negotiate the terms of commercial relations and to encourage the use of arbitration to resolve disputes between parties to dealer contracts. In December 2007, Costa Rica enacted legislation intended to implement this commitment.