DOMINICAN REPUBLIC

TRADE SUMMARY

The U.S. goods trade surplus with Dominican Republic was $819 million in 2006, an increase of $704 million from $115 million in 2005. U.S. goods exports in 2006 were $5.3 billion, up 13.3 percent from the previous year. Corresponding U.S. imports from Dominican Republic were $4.5 billion, down 1.6 percent. Dominican Republic is currently the 31st largest export market for U.S. goods.

The stock of U.S. foreign direct investment in Dominican Republic in 2005 was $758 million (latest data available), down from $1.1 billion in 2004. U.S. FDI in Dominican Republic is concentrated largely in the manufacturing and wholesale trade sectors.

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 entered into force for the Dominican Republic on March 1, 2007. The agreement also has entered into force for El Salvador, Guatemala, Honduras and Nicaragua.

The agreement removes barriers to trade and investment in the region and will strengthen regional economic integration. The CAFTA-DR also requires the Central American countries and the Dominican Republic to undertake needed reforms to provide market liberalization as well as greater 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 result of the CAFTA-DR having entered into force with respect to the Dominican Republic on March 1, 2007, about 80 percent of U.S. industrial and consumer goods are to enter the Dominican Republic duty-free immediately, with the remaining tariffs, which currently range up to 20 percent, phased-out within ten years. Nearly all textile and apparel goods that meet the agreement's rules of origin are to enter duty-free and quota-free immediately, providing new opportunities for U.S. and regional manufacturers of fiber, yarn, fabric and apparel. The agreement's tariff treatment for textile and apparel goods is retroactive to January 1, 2004. In July 2006, the government eliminated an exchange surcharge (*recargo cambiario*), which levied a 13 percent tax on all imports.

Under the CAFTA-DR, more than half of U.S. agricultural exports are to enter the Dominican Republic duty-free immediately. The Dominican Republic will eliminate its remaining tariffs on nearly all agricultural goods within 15 years. The tariffs for rice, chicken leg quarters and dairy products are to be phased-out within 20 years. The Dominican Republic applies a 20 percent tariff on U.S. frozen french fries and dehydrated potatoes, which will be phased-out within five years for frozen french fries and ten years for dehydrated potatoes. 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 amount expanding during that period.

Non-Tariff Measures

Customs Department policies and procedures frequently provoke complaints by businesses, and arbitrary clearance requirements sometimes delay the importation of merchandise for lengthy periods. On July 1, 2001, the Dominican Republic agreed to apply the World Trade Organization (WTO) Agreement on Customs Valuation whereby all imported goods from WTO Member countries pay duties according to the transaction value. The Dominican Republic requested and received authorization from the WTO to exclude 31 items. Duties on the excluded products are assessed on the basis of a minimum "reference value" assigned by Dominican Customs. U.S. exporters have reported that Dominican Customs has often used the list of reference values for non-excluded items rather than accept commercial invoices as it is supposed to.

On July 11, 2006, the Deputy Director of Customs announced that Customs would make adjustments to reference values due to high levels of undervaluation by businesses. Dominican importers and associations have complained to the U.S. Embassy that Dominican Customs has increased reference values for all products entering the country. For printing and graphics, Customs has increased assigned values approximately 30 percent over invoice values. Plastics and resins are being assigned values that are 20 percent to 30 percent higher than their invoice values and assigned values for automobiles have increased by 30 percent to 60 percent over previous valuations. In addition, for 2006 the government created an additional 17 percent tax on the first "*matricula*" (registration document) for all vehicles.

In July 2006, the Dominican Congress enacted a law providing autonomy to Dominican Customs but stating that Customs no longer has an allotment from the National Budget to support its operations. Instead, the institution must now rely on a percentage of aggregate tariff revenues and funds generated by service fees to support its operations. As a result, a service fee based on the value of all merchandise that enters the Dominican Republic was implemented by Customs. The business community complained that the fee was inconsistent with WTO and CAFTA-DR rules. In November 2006, the Dominican Congress modified the law to provide that the service fees would be specific fees, rather than value-based fees. In December 2006, Dominican Customs promulgated new regulations establishing specific fees based on weight and volume.

On October 31, 2005, the United States and the Dominican Republic signed a Customs Mutual Assistance Agreement that allows customs officials to exchange information, intelligence, and documents designed to help prevent customs offenses. The agreement provides a basis for cooperation and investigation in the areas of trade fraud, money laundering, smuggling, export controls and related security. The United States recently donated non-intrusive (X-ray) verification equipment that will upgrade and expedite the verification process. Dominican Customs is in the process of expanding the project by either purchasing or leasing additional equipment.

STANDARDS, TESTING, LABELING AND CERTIFICATION

Sanitary permits have been used in the Dominican Republic as import licenses to control import levels of selected commodities and products. The lengthy and unpredictable approval process for sanitary permits for shipments of U.S. meat and dairy products has been a serious problem for importers. In connection with the implementation of the CAFTA-DR, the Dominican Republic issued regulations that would discontinue this practice.

In addition, the Ministry of Agriculture and Livestock enforces sanitary 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 and for Tilletia sp. on shipments of U.S. rice). When the United States and Central America launched the free trade agreement negotiations, they initiated an active working group dialogue on SPS barriers to agricultural trade to facilitate market access that met in parallel with the negotiations. Through the work of this group, the Dominican Republic has committed to resolve specific measures restricting U.S. exports to the Dominican Republic. In addition, for beef, pork and poultry, the Dominican Republic agreed to recognize the equivalence of the U.S. food safety and inspection system, thereby eliminating the need for plant-by-plant inspections.

GOVERNMENT PROCUREMENT

The Dominican Republic is not a signatory to the WTO Agreement on Government Procurement. Suppliers have complained that Dominican government procurement is not conducted in a transparent manner and that corruption is widespread.

The CAFTA-DR requires 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 are to be permitted to bid on procurements of most Dominican government entities, including key ministries and state-owned enterprises, on the same basis as Dominican suppliers. The anti-corruption provisions in the agreement 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 subject to comparable penalties.

EXPORT SUBSIDIES

The Dominican Republic does not have export promotion schemes other than the tariff exemptions for inputs given to firms in the free trade zones. Under the CAFTA-DR, the Dominican Republic may 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). The Dominican Republic may maintain existing duty waiver measures through 2009 provided such measures are consistent with its WTO obligations.

INTELLECTUAL PROPERTY RIGHTS (IPR) PROTECTION

While recently enacted Dominican laws provide for sanctions to protect copyrighted works and have improved the regulatory framework for patent and trademark protection, U.S. industry continues to cite lack of IPR enforcement as a major concern. There has been improved coordination to stop television broadcast piracy among various government agencies including the Secretariat of Industry and Commerce, the Attorney General's Office, the Patent Office and the Copyright Office. To implement CAFTA-DR requirements, the Dominican government passed legislation in November 2006 to strengthen its IPR protection regime by, for example, requiring authorities to seize, forfeit, and destroy counterfeit and pirated goods and the equipment used to produce them. The CAFTA-DR mandates both statutory and actual damages for copyright and trademark infringement, measures that help ensure that monetary damages can be awarded even when it is difficult to assign a monetary value to the infringement.

Patents and Trademarks

The U.S. pharmaceutical industry has expressed concern that the sanitary authority of the Dominican Republic Department of Health continues to approve the import, export, manufacture, marketing and/or sale of pharmaceutical products that are infringing copies of patented products registered in the Dominican Republic. The Industrial Property Law, which was overhauled in 2000, has not often been applied in legal proceedings, so the effectiveness of the law has not been thoroughly tested.

The CAFTA-DR requires that test data submitted to the Dominican government for the purpose of product approval be protected against unfair commercial use for a period of five years for pharmaceuticals and ten years for agricultural chemicals. Legislation providing for this protection was passed in November 2006.

Copyrights

Despite a strong copyright law, the appointment of a specialized IPR prosecutor with nationwide jurisdiction and some improvement in enforcement activity, piracy of copyrighted materials remains common. Audio recordings and software are often copied without authorization. While the authorities have made efforts to seize and destroy such pirated goods, U.S. industry representatives point to lengthy delays when cases are submitted for prosecution.

SERVICES BARRIERS

Over the last few years, the Dominican Republic has taken steps to reform and liberalize the financial services sector. In October 2002, the Dominican Republic passed a monetary and financial law that provides for national treatment of investors in most of the financial services sector. The law establishes a regulatory regime for monetary and financial institutions, and provides for participation of foreign investment in financial intermediary activities in the Dominican Republic. The Dominican Republic ratified the 1997 WTO Financial Services Agreement and its monetary and financial law appears to go beyond the commitments of the WTO agreement.

The Dominican Republic has committed to allowing foreign banks to establish branches or local companies with up to 100 percent foreign equity to supply services in deposit-taking, lending and credit cards. Branches of foreign banks have a phase-in period of six years from 2004 to establish sufficient locally held capital to meet the same requirements that are applied to domestic banks. A foreign insurance company can establish a wholly owned subsidiary. Under the CAFTA-DR, U.S. financial service suppliers are to be allowed to establish subsidiaries, joint ventures or branches for banks and insurance companies. In addition, U.S.-based firms will be permitted to supply insurance on a cross-border basis, including reinsurance; reinsurance brokerage; and, marine, aviation, and transport insurance.

INVESTMENT BARRIERS

Existing Dominican legislation does not contain effective procedures for settling disputes arising from government actions with respect to foreign investors. Dominican expropriation standards are not consistent with international law standards and numerous U.S. investors have had disputes related to expropriated property. Subsequent to United States-Dominican Trade and Investment Council meetings in October 2002, the Dominican government set out to examine outstanding expropriation cases for possible resolution under a 1999 law. With assistance from USAID, the Dominican government identified and resolved 248 cases.

The Dominican Republic implemented the New York Convention on Recognition and Enforcement of Foreign Arbitral Awards (the New York Convention) in August 2002. The New York Convention provides courts a mechanism to enforce international arbitral awards. In a case that was recently concluded, Dominican lower courts had declined to recognize the authority of an international arbiter specified in a contract between a U.S. firm and a Dominican consulting firm. The case was on appeal to the Dominican Supreme Court when the parties decided to settle out of court. In another instance, the Dominican Supreme Court ruled in favor of an investor whose land and businesses were expropriated from the government. To date, the government only returned the investor's land which constituted the smaller of the two investments.

Under the CAFTA-DR, all forms of investment are protected including enterprises, debt, concessions, contracts and intellectual property. In almost all circumstances, U.S. investors enjoy the right to establish, acquire and operate investments in the Dominican Republic on an equal footing with local investors. Among the rights afforded 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 are protected under the CAFTA-DR by an effective, impartial procedure for dispute settlement that is fully transparent. Submissions to dispute panels and panel hearings will be open to the public, and interested parties will have the opportunity to submit their views.

ELECTRONIC COMMERCE

Law 126-02 enacted in 2002 regulates electronic commerce, documents and digital signatures. The CAFTA-DR includes provisions on electronic commerce that reflect the issue's importance to global trade. Under the CAFTA-DR, the Dominican Republic has committed to provide non-discriminatory treatment of 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.

OTHER BARRIERS

U.S. companies complain about a lack of transparency and corruption in many sectors. In addition, the judicial process in the Dominican Republic can be lengthy and unpredictable, creating uncertainty for U.S. companies. For example, a Dominican Supreme Court decision regarding the imposition of taxes on airlines was issued in 1999, stating that the Dominican Congress by law must approve any new taxes. Yet a seemingly contradictory resolution was issued in October 2006 by the Dominican civil aviation authority, which imposed without Dominican Congressional approval a tax on all airlines to be paid in U.S. dollars. The 2006 resolution is currently being challenged in the Dominican courts. The CAFTA-DR will enhance transparency, predictability and the rule of law in virtually all areas of trade and investment. In connection with the implementation of the CAFTA-DR, the Dominican Congress approved anti-corruption provisions under its domestic law that ensure that bribery in trade-related matters is treated as a criminal offense or is subject to comparable penalties.

Dealer Protection

Many U.S. companies have expressed concern that the Dominican Dealer Protection Law 173, which applies only to foreign suppliers, makes it extremely difficult to terminate contracts with local agents or distributors without paying exorbitant indemnities. Under Law 173, foreign firms may be tied to exclusive or inefficient distributor arrangements. Several U.S. companies have lost lawsuits brought under this law and have suffered significant financial penalties. By limiting the ability of a foreign firm to change its local agent without severe penalties and compensation, this law has had a negative effect on market access and on consumer welfare.

The CAFTA-DR required the Dominican Republic to change this dealer protection regime to provide more freedom to contract the terms of commercial relations and to encourage the use of arbitration to resolve disputes between parties to dealer contracts. In November 2006, the Dominican Congress passed legislation to modify Law 173 to make future contracts of U.S. companies exempt from its restrictive provisions.