COSTA RICA

TRADE SUMMARY

The U.S. trade surplus with Costa Rica was $53 million in 2003, an increase of $78 million from a $25 million deficit in 2002. U.S. goods exports in 2003 were $3.4 billion, up 10 percent from the previous year. Corresponding U.S. imports from Costa Rica were $3.4 billion, up 7 percent. Costa Rica is currently the 29th largest export market for U.S. goods.

The stock of U.S. foreign direct investment (FDI) in Costa Rica in 2002 was $1.6 billion, down $75 million from 2002. U.S. FDI in Costa Rica is concentrated mainly in the manufacturing sector.

IMPORT POLICIES

Free Trade Agreement

The United States and four Central American countries (El Salvador, Guatemala, Honduras, and Nicaragua) concluded negotiations on the U.S.-Central American Free Trade Agreement (CAFTA) in December 2003. The United States and Costa Rica on January 25 finalized Costa Rica's participation in the CAFTA. The United States and the Dominican Republic concluded market access negotiations in March 2004 to integrate the Dominican Republic into the CAFTA.

The CAFTA will not only liberalize bilateral trade between the United States and the region, but will also further integration efforts among the countries of Central America, removing barriers to trade and investment in the region by U.S. companies. The CAFTA will also require the countries of Central America to undertake needed reforms to alleviate many of the systemic problems noted below in areas including customs administration; protection of intellectual property rights; services, investment, and financial services market access and protection; government procurements; sanitary and phytosanitary (SPS) barriers; other non-tariff barriers; and other areas.

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. Costa Rica completed its agreed reductions with a decree published on January 6, 2000. Once the CAFTA goes into effect, about 80 percent of U.S. industrial and commercial goods will enter Costa Rica duty free, with the remaining tariffs being eliminated within ten years. Textiles and apparel will be duty-free and quota-free immediately if they meet the Agreement's rule of origin, promoting new opportunities for U.S. and Central American fiber, yarn, fabric and apparel manufacturing.

Selected agricultural commodities are protected with tariffs that significantly exceed the 15 percent common external tariff ceiling. These specially protected commodities include dairy products (40 percent to 65 percent) and poultry products (150 percent). Most tariffs on agricultural products range from one percent to 15 percent. New and used automobiles are also taxed heavily, from 52 percent to 79 percent, depending upon the age of the vehicle.

The CAFTA will eliminate tariffs on virtually all agricultural products within a maximum of fifteen years (dairy and rice in 20 years and chicken leg quarters in 17). Fresh potatoes and onions will be liberalized through expansion of a tariff-rate quota (TRQ). The Agreement also requires transparency and efficiency in administering customs procedures, including the CAFTA rules of origin. Costa Rica committed to ensure procedural certainty and fairness and all parties agree to share information to combat illegal trans-shipment of goods.

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Non-tariff Measures

Costa Rica levies a sales tax of 13 percent on most goods and services, whether locally produced or imported. A variable selective consumption tax is also applied to many locally produced goods and to about half of all products imported. Among the highest taxed items are arms and ammunition (75 percent), costume jewelry (50 percent), fireworks (50 percent), new and used vehicles (variable), and wine and beer (40 percent). A bill currently in the Costa Rican Legislature contemplates the enactment of a value-added tax.

A U.S. company has expressed concern about the way Costa Rican Customs determines the model year for imported vehicles, which the company believes applies a different standard to non-U.S. auto manufacturers in the Costa Rican auto market.

STANDARDS, TESTING, LABELING AND CERTIFICATION

The process for obtaining standard sanitary and phytosanitary documentation can often be cumbersome and lengthy. Importers of U.S. rice, onions, and potatoes have experienced difficulty in gaining entry for their shipments. There have been allegations that officials of the Ministry of Agriculture have delayed issuance of standard sanitary/phytosanitary (SPS) documentation to protect domestic farmers. The shipments have eventually been allowed to enter, but the delays have resulted in lost earnings for the shipments' owners. Costa Rican customs procedures remain complex and bureaucratic despite recent laws and improvements such as the establishment of an electronic "one-stop" import and export window significantly reducing the time required for customs processing. CAFTA provisions will require that Costa Rica recognize the U.S. inspection system for meat and poultry.

Currently, all foods, pharmaceuticals, agricultural goods, and chemicals and cosmetics for human and animal consumption, locally produced or imported, must be tested and certified by the Ministry of Health before they are allowed to be sold. A system of standards exists, but lack of adequate laboratory testing equipment and funds prevents effective local controls being implemented. Costa Rica requires instead that all imported products be certified safe and allowed for sale in the country of origin. Effective December 24, 2003, Costa Rica temporarily banned import of U.S. beef due to reports of BSE in the United States.

Under the CAFTA, Costa Rica agreed to apply the science-based disciplines of the WTO Agreement on Sanitary and Phytosanitary Measures, and will move toward recognizing export eligibility for all plants inspected under the U.S. food safety and inspection system. In May 2003, Costa Rica issued a decree allowing for the certification of an inspection system to replace a regulation that required poultry export plants to be inspected and approved by the Costa Rican Government. However, Costa Rican inspectors had not approved the USDA veterinary inspection system as of December 6, 2003.

When the United States and Central America launched the CAFTA negotiations, they initiated an active working group dialogue on SPS barriers to agricultural trade that met alongside the negotiations to facilitate market access. Through the work of this group, Costa Rica committed to resolve specific unjustified measures restricting imports from the United States. The SPS Working Group remains committed to continue working on resolution of outstanding issues even after the negotiations concluded.

GOVERNMENT PROCUREMENT

In recent years, a growing number of U.S. exporters and investors are reporting unsatisfactory experiences when responding to Costa Rican government tenders. For example, the Government of Costa

Rica (through the Comptroller General) and large state-owned enterprises have occasionally annulled and re-bid tenders after the financial analysis was completed and awards granted. The Government of Costa Rica 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. Costa Rica is not a party to the WTO Agreement on Government Procurement.

Under the CAFTA, U.S. suppliers would be granted non-discriminatory rights to bid on contracts from most Central American government entities, including key ministries and state-owned enterprises. The CAFTA requires fair and transparent procurement procedures, such as advance notice of purchases and timely and effective bid review procedures. The CAFTA anti-corruption provisions ensure that bribery in trade-related matters, including in government procurement, is specified as a criminal offense under Central American and U.S. laws.

EXPORT SUBSIDIES

Incentives for non-traditional exports, including the remaining tax credit certificates (CATs) formerly granted, were phased out in 1999. Tax holidays are still available for investors in free trade zones, unless tax credits are available in an investor's home country for taxes paid in Costa Rica. The CAFTA will require the elimination of WTO-illegal export subsidies.

INTELLECTUAL PROPERTY RIGHTS (IPR) PROTECTION

Inadequate enforcement of Costa Rica's intellectual property laws (IP) remains a U.S. concern. However, in recognition of improvements by the Costa Rican government to IPR laws and enforcement in April 2002 the United States moved Costa Rica from the Special 301 Priority Watch List to the Watch List, where it remains. While many elements of Costa Rican intellectual property laws appear to be consistent with TRIPS obligations, the country's criminal codes have certain weaknesses that limit effective deterrence of intellectual property crimes. Among the important steps the Costa Rican government has taken recently to improve intellectual property protection are increased raids on companies, the formation of an inter-governmental intellectual property rights commission, and the training of judges and prosecutors on intellectual property laws.

Costa Rica is currently in the process of making meaningful changes to its existing IP laws. The United States hopes that changes will include increasing criminal penalties and removing the "insignificance" provisions of the criminal code relating to IP violations. Although an improved IP legal regime may be established by early 2004, serious concerns are still present about the Costa Rican authorities’ ability to adequately prosecute IP crimes.

The CAFTA provisions will strengthen Costa Rica’s IPR protection regimes to conform with, and in many areas exceed, WTO norms and will criminalize end-user piracy, providing a strong deterrence against piracy and counterfeiting. The CAFTA will require all member countries to authorize the seizure, forfeiture, and destruction of counterfeit and pirated goods and the equipment used to produce them. It will also mandate both statutory and actual damages for copyright infringement and trademark piracy. This serves as a deterrent against piracy, and ensures that monetary damages can be awarded even when it is difficult to assign a monetary value to the violation.

Copyrights

Costa Rica's copyright law is generally adequate, but not uniformly enforced. The copyright regime was revised in 1994 to provide specific protection for computer software and in 1999 to protect integrated circuit designs. The Legislative Assembly ratified the WIPO Copyright Treaty and the WIPO

Performances and Phonograms Treaty at the end of 1999. Piracy of satellite television transmissions by the domestic cable television industry has been curtailed, but some apartment buildings and hotels, particularly in areas not served by major cable service providers, continue to engage in satellite signal piracy. Unauthorized sound recordings, videos 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 IP enforcement. The CAFTA enforcement provisions are designed to help reduce copyright piracy.

Patents

The Legislative Assembly ratified reforms required by the Paris Convention for the Protection of Industrial Property in 1995. The patent law 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. Problems remain, however, for pharmaceutical companies seeking to protect the use of data submitted for regulatory approval, in that such data are not being protected from unfair commercial use by unauthorized third parties. Costa Rica has committed under the CAFTA to protect test data and trade secrets submitted to the government for the purpose of product approval. This data will be protected against unfair commercial use for a period of 5 years for pharmaceuticals and 10 years for agricultural chemicals. Also, although there is no effective means of providing protection for plant varieties in Costa Rica's TRIPS Agreement, the CAFTA obligations require that Costa Rica accede to the UPOV Convention (International Union for the Protection of New Varieties of Plants, 1991) by June 1, 2007.

Trademarks

Counterfeiting of well-known trademarks occurs frequently 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 on registered trademarks. The CAFTA enforcement provisions are designed to help reduce copyright piracy.

SERVICES BARRIERS

Costa Rica's insurance, telecommunications, electricity distribution, petroleum distribution, potable water, sewage, and railroad transportation industries are state monopolies. In addition, there are restrictions on the participation of foreign companies in some private sector activities, such as customs handling, medical services, and other professions requiring Costa Rican registration and long-term residency of the persons providing the services. Under the CAFTA, Costa Rica will accord substantial market access in services across their entire services regime, subject to very few exceptions. For Costa Rica, liberalization in insurance will be achieved through a phased-in approach with an initial opening at entry into force, the vast majority of the market open by 2008, and a total opening by 2011. In addition, Costa Rica made specific commitments to gradually open its telecommunications market in three key areas - private network services, Internet services, and wireless services – and committed to establishing a regulatory framework to help foster effective market access.

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 100 percent owned bank subsidiaries in Costa Rica to provide lending and deposit-taking services, leasing services, credit card services, and financial information services. Costa Rica made no commitments in the WTO for the provision of securities trading, underwriting services, or any type of insurance services. However, the CAFTA will provide for openings in all these areas (insurance openings to be phased in as noted above).

Since 1995, private commercial banks have been permitted to offer checking accounts and savings deposits of less than 30 days and, since 1996, to access the Central Bank's discount window. However, 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 will ensure that foreign banks are treated under the same rules as domestic banks.

Costa Rican regulations restrict the ability of certain professions to practice on a permanent basis in Costa Rica. For example, medical practitioners, lawyers, certified public accountants, engineers, architects, teachers, and other professionals must be members of an officially recognized guild (colegio) which sets residency, examination, and apprenticeship requirements. However, under the FTA Costa Rica did agree to allow the provision of certain professional services on a reciprocal basis and also agreed to provide for temporary licensing of professional services.

INVESTMENT BARRIERS

The slow pace of Costa Rica's legal system (a commercial dispute within the Costa Rican legal system can take an average of 10 years to be resolved) has been cited as an investment barrier by many U.S. investors. Another concern to existing and potential U.S. investors is the frequent use of "recursos de amparo" before the Costa Rican Constitutional Court, which are challenges to review the possible illegality of acts by the authorities or to review the constitutionality of legislation and regulations. Although these measures are generally seen as pro-investor, such challenges have been used at times to slow procedures and hinder the quick resolution of disputes.

Costa Rica's constitution and the expropriation law make clear that expropriations are to occur only after full advance payment is made. The law applies to Costa Ricans and foreigners alike.

While electrical generation and distribution remain a state monopoly, an electricity co-generation law enacted in 1996 allowed some private-sector participation (limited to 15 percent of the total market) 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 (BOT) and build-lease-transfer (BLT) mechanisms, but the operator must have at least 35 percent Costa Rican equity. Legislative proposals to open the electricity and telecommunications sectors to investment and competition were abandoned in 2000 in the wake of large-scale demonstrations against reform and a Constitutional Court ruling against specific legislation under discussion. 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. Several U.S. investors have recently noted serious difficulties executing contracts made with the Costa Rican government, bringing into question the sanctity of contracts made with the Costa Rican government.

Under the CAFTA, all forms of investment will be protected, including enterprises, debt, concessions, contracts and intellectual property. U.S. investors will enjoy in almost all circumstances the right to establish, acquire and operate investments in the Central American countries 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 will be backed 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.

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OTHER BARRIERS

The law regulating commercial representatives of foreign firms (Law No. 6209) grants local companies exclusive representation, without a signed agreement, for an indefinite period of time. In most cases, foreign companies must pay indemnity compensation in order to terminate an undesirable relationship with the local company. The CAFTA will address these issues through comprehensive transparency requirements and specific provisions on dealer protection laws.