

DOMINICAN REPUBLIC

TRADE SUMMARY

The U.S. trade deficit with the Dominican Republic was \$185 million in 2004, a decrease of \$65 million from \$250 million in 2003. U.S. goods exports in 2004 were \$4.3 billion, up 3.3 percent from the previous year. Corresponding U.S. imports from the Dominican Republic were \$4.5 billion, up 1.6 percent. The Dominican Republic is currently the 28th largest export market for U.S. goods.

The stock of U.S. foreign direct investment (FDI) in the Dominican Republic in 2003 was \$860 million, down from \$983 million in 2002. U.S. FDI in the Dominican Republic is concentrated largely in the manufacturing and wholesale sectors.

Much of the U.S. investment in the manufacturing sector is located in export processing zones, called Free Trade Zones (FTZs), which specialize in producing apparel, footwear, electronic products and medical goods using U.S. components and materials.

IMPORT POLICIES

Free Trade Agreement

The United States engaged in free trade agreement negotiations with five Central American countries (Costa Rica, El Salvador, Guatemala, Honduras, and Nicaragua) in 2003. The United States concluded 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 engaged in negotiations with the Dominican Republic to integrate that country 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). El Salvador ratified the Agreement in December 2004 and Honduras ratified in March 2005. Legislative approval is pending in the United States and the other signatories to the Agreement.

The Dominican Republic and the Central American countries together already constitute the second largest U.S. export market in Latin America. The CAFTA-DR will remove barriers to trade with and investment in the region and will further regional economic integration.

The CAFTA-DR will also require the Central American countries and the Dominican Republic to undertake needed reforms to confront many of the problems noted below in areas including: customs administration; protection of intellectual property rights; services, investment, and financial services market access and protection; government procurement; sanitary and phytosanitary (SPS) barriers; and other non-tariff barriers.

FOREIGN TRADE BARRIERS

Tariffs

Tariffs on imported agricultural and non-agricultural goods range from zero to 20 percent. However, tariffs on some agriculture items have increased in recent years to between 25 and 40 percent.

As a result of a progressive deterioration in the Dominican Republic's economy and the Government's efforts to meet fiscal targets, the Dominican Republic implemented an exchange surcharge (*Recargo Cambiario*), in the later part of 2003, which currently imposes a 13 percent duty on all imports into the Dominican Republic. U.S. industry has expressed concerns with this surcharge. Several countries, including others in the region, have also expressed their objections. In November 2004, in response to a complaint filed by Honduras, a WTO panel found the exchange surcharge to be inconsistent with the Dominican Republic's WTO obligations. The Dominican Republic (as well as Honduras) appealed certain panel findings to the WTO Appellate Body. A decision on the matter is expected in April 2005. In addition, a luxury tax (*Impuesto Selectivo al Consumo*), ranging from 15 percent to 60 percent, applies to non-essential goods. This consumption tax for luxury items applies to locally manufactured and imported "non-essential" goods, including perfume, alcoholic beverages, motor vehicles and tobacco.

Under the CAFTA-DR, tariffs on approximately 80 percent of U.S. industrial and commercial exports to the region would be eliminated immediately. Remaining tariffs on industrial goods will be eliminated within 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. (The Agreement's tariff treatment for textile and apparel goods may be made retroactive to January 1, 2004.)

Most tariffs on agricultural goods will be eliminated within 15 years and all tariffs will eventually be eliminated. The phase-out period for rice, chicken leg quarters, and dairy products is 20 years. For the most sensitive products, tariff rate quotas will permit some immediate zero-duty access for specified quantities during the tariff phase-out period, which will expand over time as the out-of-quota duties are eliminated.

Non-Tariff Measures

Entering goods into the Dominican Republic can be a slow and arduous process. Customs Department interpretations often provoke complaints by businesspersons, and arbitrary clearance procedures sometimes delay the importation of merchandise for lengthy periods. Furthermore, the Dominican Republic Government requires importers to obtain from a Dominican Republic Consulate in the United States a consular invoice and "legalization" of documents, with attendant fees and delays. Importers can pay a fine (approximately \$400) if they lack these consular

FOREIGN TRADE BARRIERS

documents and some choose to do so rather than deal with Dominican Republic consulates in the United States. The use of “negotiated fee” practices to gain faster customs clearance continues to put some U.S. firms at a competitive disadvantage in the Dominican market. Under the CAFTA-DR, the Dominican Republic has committed to (i) provide greater transparency and procedural certainty in administering customs procedures; (ii) share information with other Parties to combat illegal transshipment of goods; and (iii) eliminate the consular invoice requirement.

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 inability to apply for and receive sanitary permits in a timely manner in the Dominican Republic for shipments of U.S. meat and dairy products has been a serious problem for U.S. exporters and importers in the Dominican Republic. This situation has improved significantly in recent months. While sanitary permits remain mandatory for the importation of many products, they are no longer being used to the same degree to control imports.

GOVERNMENT PROCUREMENT

The CAFTA-DR requires fair and transparent procurement procedures, including advance notice of purchases and timely and effective bid review procedures. Under the CAFTA-DR, U.S. suppliers will be permitted to bid on procurements covered by the Agreement for most Dominican Republic government entities, including key ministries and state-owned enterprises on the same basis as Dominican Republic suppliers. The anti-corruption provisions in the Agreement require each government to ensure that bribery in trade-related matters, including in government procurement, is treated as a criminal offense, or is subject to comparable penalties, under its law.

EXPORT SUBSIDIES

The Dominican Republic does not have export promotion schemes other than the exemptions 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

Although the Dominican Republic has strong legislation to protect copyrights and has improved the regulatory framework for patent and trademark protection, U.S. industry representatives continue to cite lack of IPR enforcement as a major concern. As a result, the Dominican Republic remained on the Special 301 Watch List for 2004. The government has taken some

FOREIGN TRADE BARRIERS

steps to prosecute violators, but there is insufficient training or resources for enforcement, and the judicial process moves very slowly. While the Dominican Republic has ratified the World Intellectual Property Organization (WIPO) Copyright Treaty and the WIPO Performances and Phonograms Treaty, it has not deposited instruments of ratification for these two treaties with WIPO as of December 31, 2004.

CAFTA-DR obligations would strengthen the Dominican IPR protection regime to conform with, and in many areas exceed, WTO norms. CAFTA-DR obligations would also provide stronger deterrence against piracy and counterfeiting by criminalizing end user piracy and requiring the Dominican Republic to authorize the seizure, forfeiture, and destruction of counterfeit and pirated goods and the equipment used to produce them. The CAFTA-DR text also mandates both statutory and actual damages for copyright and trademark infringement which would ensure that monetary damages can be awarded even when it is difficult to assign a monetary value to the violation.

Patents and Trademarks

The United States government has continued to urge the Dominican Republic to bring the Industrial Property Law fully in line with its TRIPS Agreement obligations. Existing law and regulations have not yet been applied in legal proceedings, so the effectiveness of those measures has not been tested. The CAFTA-DR obligations would require that test data submitted to the Dominican government for the purpose of product approval be protected against unfair commercial use for a period of 5 years for pharmaceuticals and 10 years for agricultural chemicals.

Copyrights

Despite a strong copyright law passed in 2000, the appointment of a specialized IPR prosecutor with nationwide jurisdiction in 2003, and some improvement in enforcement activity, piracy of copyrighted materials is common. Audio recordings and software are being copied without authorization despite the government's efforts to seize and destroy such pirated goods. In addition, the U.S. Government continues to receive reports of television and cable operators re-broadcasting signals without compensating either the original broadcaster or the originator of the recording. U.S. industry representatives point to extended delays in the judicial process when cases are submitted for prosecution. While investigations and raids against broadcasting stations involved with the unauthorized transmission of copyrighted programming have been initiated, several high-profile cases against large cable companies were postponed repeatedly throughout 2004. The Dominican Republic court system remains a significant hurdle in providing effective, deterrent enforcement, due in part to antiquated criminal procedural rules.

The Dominican government has had some success in reducing both video and television broadcast piracy, including cooperation with administrative and criminal agencies. Nonetheless, industry remains concerned that the lack of effective enforcement against television and video

FOREIGN TRADE BARRIERS

piracy in the Dominican Republic continues to be a serious problem. Under CAFTA-DR, the Dominican Republic assumed several specific obligations with respect to broadcast piracy and the United States will continue to work them to strengthen enforcement measures for broadcast piracy.

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 has 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 itself to allow foreign banks to establish branches or local companies with up to 100 percent foreign equity to supply deposit-taking, lending, and credit card services. 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 applied to domestic banks.

A foreign insurance company can establish a wholly owned subsidiary. Under the CAFTA-DR, U.S. financial service suppliers would have full rights to establish subsidiaries, joint ventures or branches for banks and insurance companies. Furthermore, the Dominican Republic will allow U.S.-based firms to supply insurance (including reinsurance; reinsurance brokerage; marine, aviation and transport (MAT) insurance; and other insurance services) on a cross-border basis.

INVESTMENT BARRIERS

Existing Dominican legislation does not contain effective procedures for settling disputes arising from the government's actions. Dominican expropriation standards are not consistent with international law standards and numerous U.S. investors have had disputes related to expropriated property. Subsequent to U.S.-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 the help of a USAID contractor, the Boston Institute for Developing Economies (BIDE), the Dominican government was able to identify and analyze 248 cases, which were resolved, either by paying claimants with bond issues under Law 104-00 or by dismissing the claim. In an ongoing dispute, a U.S. firm is appealing a verdict from a Dominican Republic court which is inconsistent with the findings of the international arbiter identified in the original contract.

In 1999, privatization of the state electric company left control of the distribution system and most generating capacity in private hands. Beginning in 2003 the electricity sector in the

FOREIGN TRADE BARRIERS

Dominican Republic began to deteriorate markedly, in part due to the government's decision to subsidize much of the rising cost of electricity. This subsidy program has proven unsustainable. The continuing problems in the sector are due to distributors' inability to collect sufficient funds from consumers and the Dominican government, and to the pricing formula that distributors must use to convert dollar-indexed electricity rates into peso charges to their customers, which has been exacerbated by rises in petroleum prices as the exchange value of the peso fell sharply. The total amount of government debt owed to generators and distributors is approximately \$600 million and continues to grow. The U.S. Government through USAID has funded consultant studies of and coordination among participants in the sector, in order to elaborate the elements of a plan intended to stabilize the sector through December 2005, although this plan does not call for the reduction of the outstanding total of debt. Electrical sector problems threaten economic competitiveness and create wide-spread dissatisfaction with the government and private sector participants.

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.

Under the CAFTA-DR, all forms of investment would be protected, including enterprises, debt, concessions, contracts and intellectual property. U.S. investors would enjoy, in almost all circumstances, 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 would be due process protections and the right to receive a fair market value for property in the event of an expropriation. As in our other FTAs, these rights apply with respect to acts or facts that take place after the entry into force of the CAFTA-DR. Investor rights would be backed by an effective, impartial procedure for dispute settlement that would be fully transparent. Submissions to dispute panels and panel hearings would be open to the public, and interested parties would have the opportunity to submit their views.

ELECTRONIC COMMERCE

Law 126-02 enacted in 2002 regulates electronic commerce, documents and digital signatures. However, shipping costs, a non-existent public postal system, difficulties with customs, and import duties are practical constraints to the development of electronic commerce in the form of online merchandising. Major private air parcel express services serve the capital and provide generally speedy service. Under the CAFTA-DR, the Dominican Republic would agree to provisions on electronic commerce that reflect the issue's importance in global trade and the importance of supplying services by electronic means as a key part of a vibrant electronic commerce environment. The Dominican Republic would also commit to non-discriminatory treatment of digital products and agree not to impose customs duties on such products and to cooperate in numerous policy areas related to e-commerce.

FOREIGN TRADE BARRIERS

OTHER BARRIERS

U.S. companies continue to complain about a lack of transparency and corruption in many sectors. Lack of predictability in the judicial process, which can also be lengthy, also presents problems for U.S. companies seeking to resolve contract disputes. The CAFTA-DR will enhance transparency, predictability, and the rule of law in virtually all areas of trade and investment. Further, the anti-corruption provisions in the Agreement require each government to ensure that bribery in trade-related matters is treated as a criminal offense, or is subject to comparable penalties, under its law.

Dealer Protection

U.S. companies have also 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. Several U.S. companies have lost lawsuits brought under this law and have suffered significant financial penalties. This law has had a negative impact on market access and on consumer welfare and has been a serious obstacle to distribution in the Dominican Republic. Under the CAFTA-DR, the Dominican Republic has committed to change its “dealer protection” regime. Under its existing regime, U.S. firms may be tied to exclusive or inefficient distributor arrangements. The Dominican Republic committed to provide U.S. firms and their Dominican Republic partners more freedom to contract the terms of their commercial relations and to encourage the use of arbitration to resolve disputes between parties to dealer contracts.