

DOMINICAN REPUBLIC

TRADE SUMMARY

The United States had a trade deficit with the Dominican Republic of \$242 million in 2003, a change of \$323 million from the \$81 million surplus for 2002. U.S. goods exports to the Dominican Republic were \$4.2 billion, a decrease of about \$37 million from the previous year. Corresponding U.S. imports from the Dominican Republic were \$4.5 billion, an increase of \$286 million. The Dominican Republic is currently the 26th largest export market for U.S. goods.

The stock of U.S. foreign direct investment (FDI) in the Dominican Republic in 2002 was \$1.1 billion, down 8.9 percent from 2001. 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 (FTZ), 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 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.

Integrating the Dominican Republic with the CAFTA expanded the FTA by some 40 percent, creating a free market for U.S. goods and services that would become the 2nd largest U.S. export market in Latin America. The Dominican Republic is among the world's fastest-growing economies, and is already an important market for U.S. agricultural, fish, apparel, textiles and forestry products. The FTA will also require the Dominican Republic and 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 procurement; sanitary and phytosanitary (SPS) barriers; other non-tariff barriers; and other areas.

Tariffs

As a result of a progressive deterioration in the Dominican economy during the second half of 2003, the Dominican government has requested assistance from the International Monetary Fund (IMF). As part of the initial agreement reached with the IMF, the Dominican Government ordered the application of a two-percent surcharge on the CIF value of all imports. Decree 646-03 establishes that goods that have been exempt from taxes and surcharge under free trade agreements will not pay the new surcharge. The decree does not mention if FTZ items are exempt, although previous statements from the government indicate the surcharge would affect free zone imports. The government also planned to implement a 5 percent export tax as part of a revised IMF agreement under negotiation at the end of 2003.

The Dominican Republic applies a maximum tariff on most items of 20 percent. Tariffs on beef imports, however, have been raised in recent years from 25 percent to 40 percent. The CAFTA will eliminate most tariffs on industrial goods within ten years and most tariffs on agricultural goods within fifteen years.

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Non-tariff Measures

Bringing goods through Dominican Customs can often 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 government continues to require importers to obtain from a Dominican Consulate in the United States a consular invoice and “legalization” of documents, with attendant fees and delays. 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 FTA, the Dominican Republic commits to providing transparency and efficiency in administering customs procedures, to ensuring procedural certainty and fairness, to sharing information with other parties to combat illegal trans-shipment of goods, and to eliminating the consular invoice requirement.

U.S. companies have also expressed concern that the Dominican Dealer Protection Law 173, which applies only to foreign and not domestic 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 in the Dominican Republic. In the FTA, the Dominican Republic has committed to loosen restrictions that lock U.S. firms into exclusive or inefficient distributor arrangements as it dismantles distribution barriers.

In late 2003, in anticipation of the signing of a second IMF stand-by agreement, and in an effort to raise badly needed revenue, the Dominican government increased the exchange surcharge (Recargo Cambiario) from 4.75 percent to 10 percent. Dominican Customs collects the Cambiario, which is a tax imposed on the invoice dollar amounts of all imports into the Dominican Republic. The Cambiario was initially supposed to be gradually phased down according to the Monetary and Financial Law No. 183-02 (Nov. 21, 2002). On October 23, 2003, the Central Bank issued a resolution increasing the Cambiario to 10 percent and delaying the phase out until February 2004 or when macroeconomic conditions were stable. This resolution was implemented on November 3, 2003. These short-term measures are expected to expire prior to the FTA’s entry into force.

The Dominican government implemented the WTO Agreement on Customs Valuation in July 2001 following a 16-month extension granted by the WTO Committee on Customs Valuation.

STANDARDS, TESTING, LABELING AND CERTIFICATION

Sanitary permits are required for the importation of many agricultural products. In practice, these sanitary permits are used 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 continues to be a serious problem for U.S. export companies and Dominican importers. This is a result of a continuing policy by the General Directorate of Livestock within the Ministry of Agriculture to delay or reject applications for sanitary permits, based on its assessment of market needs and the effect imports would have on domestic producers.

The trade-restrictive actions of the Livestock Directorate fall into two main areas: absorption requirements and lack of transparency.

Absorption Requirements

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Absorption requirements, which require an importer to purchase specified quantities of domestic products in order to be able to import those same types of products, were to be eliminated in 2003. However, U.S. companies indicate that the Livestock Directorate is requiring importers to purchase 25 percent of their requirements for turkeys from domestic sources, in order to receive sanitary permits.

Transparency

The Dominican Republic generally accepts U.S. certifications and standards, but U.S. agricultural exports are sometimes subject to sanitary and phytosanitary (SPS) measures that appear to be arbitrarily enforced, not based on science, and applications for permits may be rejected or subject to lengthy delays, with little or no explanation and no apparent basis in Dominican law. This is especially a problem for products with a short shelf life, such as yogurt, which could quickly pass its expiration date if delayed in port. Some U.S. companies have reported that they are no longer attempting to export to the Dominican Republic because of financial losses and frustration from previous attempts to obtain sanitary permits. The CAFTA will impose transparency requirements to help alleviate problems with sanitary permits.

Furthermore, under the FTA, the Dominican Republic reaffirmed its commitment to apply the science-based disciplines of the WTO Agreement on SPS measures. When the United States and the Dominican Republic launched FTA market access negotiations, they initiated an active working group dialogue on SPS barriers to agricultural trade that have met alongside the negotiations. In this working group the Dominican Republic is making additional commitments to resolve specific unjustified measures restricting imports from the United States. The SPS Working Group will continue working on resolution of outstanding issues even after the negotiations conclude.

GOVERNMENT PROCUREMENT

The Dominican Republic is not a party to the WTO Agreement on Government Procurement. However, the United States lifted its suspension of its waiver of “Buy America Act” provisions in 2003 after the Dominican government increased its cooperation in the World Trade Organization Working Group on Transparency in Government Procurement, its cooperation in the negotiations for a Free Trade Area of the Americas (FTAA), and its action in submitting legislation to its Congress that would make the government procurement process more transparent. However, the Dominican Congress has yet to take action on this legislation. Nonetheless, in the CAFTA, the Dominican Republic committed to ensure that U.S. suppliers are granted non-discriminatory rights to bid on contracts from Central American government ministries, agencies, and departments and that procurements are conducted in accordance with fair and transparent procurement procedures.

EXPORT SUBSIDIES

The Dominican Republic does not have aggressive export-promotion schemes other than the exemptions given to firms in the free trade zones. The WTO granted the Dominican Republic a waiver allowing it to phase out its subsidies. The CAFTA requires the elimination of WTO-illegal export subsidies once the waiver expires.

INTELLECTUAL PROPERTY RIGHTS (IPR) PROTECTION

The Dominican government took steps to strengthen its intellectual property rights regime during 2003, and as a result, the United States improved the country’s standing under Special 301 from Priority Watch List to Watch List. Although the Dominican Republic has strong legislation to protect copyrights and has improved the regulatory framework for patent and trademark protection, United States industry representatives continue to cite lack of IPR enforcement as a major concern. The government has taken

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some steps to prosecute violators, but there is insufficient training or resources for enforcement, and the judicial process moves very slowly. The Dominican Republic recently ratified the WIPO Copyright Treaty and has submitted the WIPO Performances and Phonograms Treaty to Congress for ratification.

The FTA obligations will strengthen the Dominican IPR protection regime 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 requires the Dominican Republic to authorize the seizure, forfeiture, and destruction of counterfeit and pirated goods and the equipment used to produce them. It also mandates both statutory and actual damages for copyright infringement and trademark piracy. This will serve 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.

Patents and Trademarks

The Dominican government issued a Presidential decree on March 3, 2003, stipulating regulatory measures that appear to significantly strengthen the Industrial Property Law passed in 2000 and bring the law into compliance with most elements of the TRIPS Agreement. However, a second Presidential decree was issued three days later on March 6, 2003, that unfortunately nullified many of the positive elements of the first decree. The United States government has continued to pressure the Dominican Republic to issue a corrective decree that fully brings the Industrial Property Law in line with its TRIPS Agreement obligations. Furthermore, the regulations have not yet been applied in legal proceedings, so the effectiveness of those measures has not been tested. The CAFTA obligations ensure that test data and trade secrets submitted to the Dominican government for the purpose of product approval will 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 and some improvement in enforcement activity, piracy of copyrighted materials is still widespread. Video and audio recordings and software are being copied without authorization despite the government's efforts to seize and destroy such pirated goods. The U.S. Government continues to receive serious reports of television and cable operators rebroadcasting 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. High-profile cases against large cable companies were postponed repeatedly in 2003, and have now been rescheduled for early 2004.

SERVICES BARRIERS

In October 2002, the Dominican Republic passed a new 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.

It is not clear at this time what long-term effects the Banco Intercontinental (Baninter) bank fraud scandal will have on financial services sector investment. The fraud resulted in an estimated \$2.2 billion loss, equivalent to roughly 12-15 percent of GDP. The Dominican government chose to guarantee all deposits, even though the banking law sets a relatively low ceiling for government guarantees of bank deposits. Since the Baninter scandal, the government has intervened in two other Dominican banks that became insolvent, BanCredito and Banco Mercantil. The Dominican Republic's Leon Jimenez Group

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subsequently purchased BanCredito, and Republic Bank, based in Trinidad & Tobago, acquired Banco Mercantil.

The Dominican Republic has ratified the 1997 WTO Financial Services Agreement and its new 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. Foreign investors could also own up to 100 percent equity in local suppliers of leasing and insurance service suppliers. There is no longer any need for local participation.

The Dominican Insurance Law remains unchanged requiring that Dominican shareholders hold at least 51 percent of the shares of national insurance companies. Under the CAFTA, U.S. financial service suppliers will 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 on a cross-border basis, including reinsurance; reinsurance brokerage; marine, aviation and transport (MAT) insurance; and other insurance services.

INVESTMENT BARRIERS

Dominican legislation does not contain effective procedures for settling disputes arising from Dominican Government actions. Dominican expropriation standards are not consistent with international law standards. Numerous U.S. investors have outstanding disputes related to expropriated property. Subsequent to U.S.-Dominican Trade and Investment Council meetings in October 2002, the Government set out to examine outstanding expropriation cases for possible resolution through payment or issuance of government bonds under a 1999 law. With the help of a USAID contractor, the Boston Institute for Developing Economies (BIDE), the Dominican government has been able to identify and analyze 245 cases and has sent 188 of them (76.7 percent) to the Debt Commission, which approved them for resolution. The remaining cases will be sent to the next Debt Commission meeting, which has yet to be set.

The Dominican Republic implemented the New York Convention on Recognition and Enforcement of Foreign Arbitral Awards (the New York Convention) in August of 2002, which provides courts a mechanism to enforce international arbitral awards. The CAFTA provides effective remedies through transparent arbitration for investors who seek compensation for acts of expropriation by the Dominican Government.

In 1999, capitalization of the state electric company left control of the distribution system and most generating capacity in private hands. In 2002, the Dominican government reached agreement to renegotiate most of the contracts with independent power producers (IPP) and established a new agreement with the distributors on collection and payment mechanisms, as well as rate structure. In 2003, however, the electricity sector in the Dominican Republic began to deteriorate. The crisis in the sector is primarily due to distributors' inability to collect sufficient funds from consumers and the Dominican Government, and the pricing formula that distributors must use to convert dollar-indexed tariffs into peso charges to their customers, which has been exacerbated by the devaluation of the peso. The total amount owed in payment arrears to the generators and distributors exceeds \$350 million, and continues to grow. In September, the government surprised many observers by re-purchasing Spanish firm Union Fenosa's share of two distributors (EDENORTE and EDESUR). The buyout resulted in a suspension of the IMF stand-by agreement that had been agreed in August. Electrical sector problems threaten economic competitiveness and have the potential to spark further social unrest in the Dominican Republic.

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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 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 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.

ELECTRONIC COMMERCE

The U.S. Government is not aware of specific legislation or taxes that apply to electronic commerce. However, shipping costs, difficulties with the postal system and customs, and import duties are practical constraints to e-commerce. Under the CAFTA, the Dominican Republic agreed to provisions on e-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 e-commerce environment. The Dominican Republic also committed to non-discriminatory treatment of digital products and agreed not to impose customs duties on such products and to cooperate in numerous policy areas related to e-commerce.

OTHER BARRIERS

U.S. companies continue to complain about lack of transparency and corruption in all sectors. Lack of predictability in the judicial process also presents problems for U.S. companies seeking to resolve contract disputes.