DOMINICAN REPUBLIC

TRADE SUMMARY

The U.S. goods trade balance with Dominican Republic went from a trade deficit of $169 million in 2004 to a trade surplus of $105 million in 2005. U.S. goods exports in 2005 were $4.7 billion, up 8.0 percent from the previous year. Corresponding U.S. imports from Dominican Republic were $4.6 billion, up 1.7 percent. Dominican Republic is currently the 30th largest export market for U.S. goods.

The stock of U.S. foreign direct investment (FDI) in Dominican Republic in 2004 was $1.0 billion, up from $816 million in 2003. U.S. FDI in Dominican Republic is concentrated largely in the manufacturing, and wholesale 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 except Costa Rica have ratified the agreement. CAFTA-DR will enter into force between the United States and other signatories on a rolling basis as the United States determines that countries have taken sufficient steps to implement their commitments under the Agreement.

CAFTA-DR will remove barriers to trade and investment in the region and will further regional economic integration. CAFTA-DR will also require the Central American countries and the Dominican Republic to undertake needed reforms to provide market liberalization, transparency and certainty in areas including: customs administration; protection of intellectual property rights; services, investment, financial services; government procurement; sanitary and phytosanitary (SPS) barriers; and to liberalize other non-tariff barriers.

Tariffs

Tariffs on imported agricultural and non-agricultural goods range from zero percent to 20 percent.

Responding to urgent fiscal needs, the Dominican Republic's monetary authorities raised an exchange surcharge (r*ecargo cambiario*) from 1.75 percent to 10 percent in late 2003 and then to

13 percent in January 2005. This levy is currently applied to all imports. In November 2004, in response to a complaint filed by Honduras, a World Trade Organization (WTO) panel found the exchange surcharge to be inconsistent with the Dominican Republic's WTO obligations. Because the levy is not compliant with CAFTA-DR obligations, authorities in the Dominican Republic intend to repeal it upon the entry into force of the agreement. The IMF standby agreement includes elimination of the levy.

A luxury tax (*Impuesto Selectivo al Consumo*) ranging from 15 percent to 60 percent applies to selected categories of goods. This consumption tax for luxury items applies equally to locally manufactured and imported "non-essential" goods, including perfume, alcoholic beverages, motor vehicles, and tobacco.

Once the CAFTA-DR goes into effect, about 80 percent of U.S. industrial goods will enter the region duty-free, with the remaining tariffs phased out over 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 manufacturers of 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 on goods from CAFTA-DR countries 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 duty-free access for specified quantities during the tariff phase-out period. These amounts will increase over time as the out-of-quota duties are eliminated.

Non-Tariff Measures

Bringing goods into the Dominican Republic can be a long process. Customs Department interpretations often provoke complaints by businesses and arbitrary clearance procedures sometimes delay the importation of merchandise for lengthy periods. The Customs Director General is committed to eliminating corruption from the Customs Department and instituting clear and transparent customs procedures.

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 CAFTA-DR, the Dominican Republic has committed to provide greater transparency and procedural certainty in administering customs procedures. In May 2005, the Customs Director announced plans for more efficient, accelerated customs clearances for a greater number of hours each day, and the Director informed express courier services and others that he planned to implement a surcharge to offset the increased costs of these services. This fee would apply to both national and international express courier services. Express Delivery companies have been working with the Dominican Customs service in an effort to agree to a reasonable non-discriminatory fee structure. Personnel from the U.S. Embassy have been engaged throughout the dispute. The Customs Director emphasized to the Embassy officials that his aim was to assure transparent and honest administration of the customs function.

Express companies agree in principle to pay a fee for service but their view is that the fee should not be calculated as a percentage of their billings. As of December 2005, discussions continue and the Dominican Republic's Customs service has not yet begun to assess the fee.

The Dominican government requires importers to obtain from a Dominican consulate in the United States a consular invoice and "legalization" of documents accompanied by attendant fees and delays. Importers can pay a fine of approximately $400 if they lack these consular documents, and some choose to do so rather than deal with Dominican Republic consulates in the United States. Elimination of the consular invoice is required by CAFTA-DR.

On October 31, 2005, the United States and the Dominican Republic signed a Customs Mutual Assistance Agreement (CMAA) 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.

U.S. cinema companies have also expressed concern over recent increases in the Transfer of Industrialized Goods and Services Tax (ITBS) on cinema tickets. Box office taxes are scheduled to increase from 6 percent to 16 percent by 2006 and may represent an impediment in the industries development of the market.

STANDARDS, TESTING, LABELING AND CERTIFICATION

Sanitary permits are 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 addition, the Ministry of Agriculture and Livestock (MAG) 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 that met in parallel with the negotiations to facilitate market access. The objective was to leverage the impetus of active trade negotiations to seek changes to the Central American countries' SPS regimes. Through the work of this group, the Dominican Republic has committed to resolve specific measures restricting U.S. exports to the Dominican Republic. In particular, for meat, dairy, 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 party to the WTO Agreement on Government Procurement. Dominican government procurement is still not conducted in a clear and transparent way, despite assurances from the highest levels of government that it would change its procurement practices. Some steps have been taken to enhance transparency, but corruption is still widespread.

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, which includes almost all government acquisition of goods, services and construction services.

Under the CAFTA-DR, U.S. suppliers will be permitted to bid on procurements by 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 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 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 the Dominican Republic has laws with sanctions adequate 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. The Dominicans committed in a side letter to CAFTA-DR to make stronger efforts to halt television broadcast piracy and agreed to report on their efforts in this regard in a quarterly report to USTR. The Dominican government has delivered these quarterly reports on time since January 2005. There has been improved coordination in this regard among various government agencies including the Secretariat of Industry and Commerce, the Attorney General’s Office, the Patent Office and the Copyright Office. The authorities advised cable television operators of their legal responsibilities regarding copyright, secured a formal agreement with the operators' association in August 2005, and in September seized equipment from six operators found to be infringing the laws. The Attorney General's office instituted proceedings against several television broadcasters in the first half of 2005 for infringement of the copyrights of the owners of various U.S. film titles.

CAFTA-DR will obligate the Dominican Republic to strengthen its IPR protection regime, in particular, requiring stronger deterrence against piracy and counterfeiting by criminalizing end user piracy and requiring the authorities to seize, forfeit, and destroy counterfeit and pirated goods and the equipment used to produce them. CAFTA-DR mandates both statutory and actual damages for copyright and trademark infringement, measures to 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 revised Industrial Property Law and regulations have not yet been applied in legal proceedings, so the effectiveness of those measures has not been tested. 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 5 years for pharmaceuticals and 10 years for agricultural chemicals. Several Dominican pharmaceutical manufacturers have repeatedly sought changes to proposed implementing laws and procedures to avoid this requirement. Complying with the requirements for data protection will necessitate close and more effective coordination between licensing authorities and the Patent Office.

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 often copied without authorization. The authorities have made efforts to seize and destroy such pirated goods.

The U.S. Government continues to receive complaints concerning broadcasting of signals and copyrighted material without licenses from the copyright owners. U.S. industry representatives point to lengthy delays when cases are submitted for prosecution, a complaint that characterizes the general judicial process in the Dominican Republic.

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 allow 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 will 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; marine, aviation, and transport (MAT) insurance.

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 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 Supreme Court when the parties decided to settle out of court.

Under the CAFTA-DR, all forms of investment will be protected including enterprises, debt, concessions, contracts and intellectual property. In almost all circumstances U.S. investors will 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 after entry into force will be 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 will be 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. However, shipping costs, an effectively non-existent public postal system, customs difficulties with customs, and import duties present practical constraints to the development of electronic commerce in the form of on-line merchandising. Major private air parcel express services serve the capital and major cities, providing generally speedy service.

With CAFTA-DR, the Dominican Republic has agreed to provisions on electronic commerce that reflect the issue's importance in global trade and the importance of supplying services by electronic means. The Dominican Republic is committing to non-discriminatory treatment of digital products and agrees not to impose customs duties on such products and to cooperate in policy areas related to e-commerce.

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, 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 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 the existing system, 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 impact on market access and on consumer welfare. CAFTA-DR requires 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.