Market Openness Review of Costa Rica

Background: This is the final version of the Market Openness Review of Costa Rica [TAD/TC/ACS(2016)3], approved through the written procedure as agreed at the Trade Committee meeting of 21-22 April 2016.

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TABLE OF CONTENTS

ACRONYMS ........................................................................................................................................... 4
EXECUTIVE SUMMARY .......................................................................................................................... 9
MARKET OPENNESS REVIEW OF COSTA RICA ............................................................................... 11
  1. Economic and policy environment ................................................................................................. 12
     1.1 Trade policy developments ........................................................................................................ 14
  2. Policy framework for market openness: the efficient regulation principles ................................. 36
     2.1 Transparency ........................................................................................................................... 37
     2.2 Non-discrimination ................................................................................................................. 52
     2.3 Measures to avoid unnecessary trade restrictiveness .............................................................. 66
     2.4 Encouraging the use of internationally harmonised measures .............................................. 87
     2.5 Streamlining conformity assessment procedures .................................................................. 94
  3. Protection of Intellectual Property Rights ....................................................................................... 97
     3.1 Overview of the IP system in Costa Rica ................................................................................... 98
  4. Compliance ....................................................................................................................................... 112
  5. Conclusions and policy options ..................................................................................................... 115
     General assessment and main challenges ...................................................................................... 115
     Policy Options .............................................................................................................................. 116
     Policy Options .............................................................................................................................. 117
     Policy Options .............................................................................................................................. 117
     Policy Options .............................................................................................................................. 119
     Policy Options .............................................................................................................................. 119
     Policy Options .............................................................................................................................. 120
REFERENCES ......................................................................................................................................... 121
ANNEX .................................................................................................................................................. 127

Tables

Table 1. Free Trade agreements concluded by Costa Rica .................................................................. 20
Table 2. BITs signed and ratified by Costa Rica .............................................................................. 21
Table 3. FTAs with investment provisions ratified, signed and under negotiation by Costa Rica ....... 22
Table 4. Costa Rica’s simple and trade-weighted statutory tariffs ..................................................... 25
Table 5. Top 20 tariff rates applied by Costa Rica, 2012 .................................................................. 27
Table 6. Doing Business, 2015 ......................................................................................................... 67
Table 7. Trading Across Borders indicators, 2015 .......................................................................... 78
Table 8. IPR applications by residents, 2013 .................................................................................... 99
Table 9. International intellectual property rights treaties ratified by Costa Rica ........................... 104
Table 10. Registrations in the Patent Office, 2010-2014 ................................................................. 108
Table 11. Processed applications, 2010-2014 .................................................................................. 109
Figures

Figure 1. Annual GDP growth ................................................................. 13
Figure 2. Real effective exchange rates ..................................................... 15
Figure 3. Terms of trade ................................................................. 16
Figure 4. Annual labour productivity growth by sector ........................ 18
Figure 5. Intra-regional trade ............................................................... 24
Figure 6. Tariffs faced by Costa Rica, simple and weighted average, world and OECD countries ................................................................. 26
Figure 7. Trade ratios in BRICS countries, selected OECD countries and Costa Rica ................................................. 28
Figure 8. Foreign Direct Investment in Costa Rica by sector ................. 29
Figure 9. Foreign Direct Investment Inflows ........................................... 30
Figure 10. Composition of the Costa Rican domestic production ....... 31
Figure 11. Costa Rica's trend in foreign trade, 2007-2013 ...................... 31
Figure 12. Costa Rica’s top trading partners ........................................... 32
Figure 13. Costa Rica’s foreign trade structure, 2013 .......................... 33
Figure 14. Herfindahl-Hirschman Index for Costa Rica and OECD, 1994-2013 ................................................................. 34
Figure 15. Costa Rica’s service trade composition, 2013 ....................... 35
Figure 16. Millions of colones adjudicated between 2012 and 2014 by type of procedure ................................................................. 48
Figure 17. STRI for Costa Rica, by sector and policy area ....................... 56
Figure 18. STRI by policy area: Architecture services ......................... 57
Figure 19. STRI by policy area: Engineering services ........................... 58
Figure 20. STRI by policy area: Legal services ....................................... 59
Figure 21. STRI by policy area: Accounting/Auditing services .............. 59
Figure 22. STRI by policy area: Construction services ......................... 60
Figure 23. STRI by policy area: Computer services ................................ 61
Figure 24. STRI by policy area: Telecommunication services ............... 62
Figure 25. STRI by policy area: Commercial banking ......................... 65
Figure 26. STRI by policy area: Insurance services ............................... 66
Figure 27. Starting a business and enforcing contracts in Costa Rica, 2015 ................................................................. 68
Figure 28. OECD Trade Facilitation indicators ..................................... 81
Figure 29. Investment in R&D in Costa Rica ......................................... 99

Boxes

Box 1. The Central American Common Market .................................... 23
Box 2. The OECD efficient regulation principles for market openness ........ 36
Box 3. Procedure for the approval of a Bill of Law .................................. 41
Box 4. Dealing with environmental permits in Costa Rica .................... 70
Box 5. Digital platforms in Costa Rica .................................................. 71
Box 6. Administrative simplification in the Municipality of Alajuela ........ 74
Box 7. The OECD trade facilitation indicators ....................................... 79
Box 8. Costa Rica's Single Window for Foreign Trade ......................... 82
Box 9. Costa Rican ports and border crossings ..................................... 85
Box 10. Promoting quality among SMEs .............................................. 88
Box 11. Central American Regulations on Sanitary and Phytosanitary Measures and Procedures .................................................. 91
Box 12. Main themes of the national legal framework for IP .................. 103
<table>
<thead>
<tr>
<th>ACRONYMS</th>
<th>Definition</th>
</tr>
</thead>
<tbody>
<tr>
<td>ACI</td>
<td>Central American Import Tariff (Arancel Centroamericano de Importación)</td>
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<td>ACOPI</td>
<td>Costa Rican Academy of Intellectual Property (Academia Costarricense de Propiedad Intelectual)</td>
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<td>AENOR</td>
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<td>Authorised Economic Operator</td>
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<td>AFNOR</td>
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<td>APC</td>
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<td>Standards and Certification for Mechanical Engineering</td>
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<td>American Society for Testing and Materials</td>
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<td>BCCR</td>
<td>Costa Rican Central Bank (Banco Central de Costa Rica)</td>
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<td>BIT</td>
<td>Bilateral Investment Treaty</td>
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<td>BOP</td>
<td>Balance of Payments</td>
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<td>BRICS</td>
<td>Brazil, Russia, India, China and South Africa</td>
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<td>BRIICS</td>
<td>Brazil, Russia, India, Indonesia China, and South Africa</td>
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<td>CACM</td>
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<td>Caribbean Community</td>
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<td>Central American Uniform Customs Code (Código Aduanero Uniforme Centroamericano)</td>
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<td>Costa Rica’s Social Security Fund (Caja Costarricense de Seguridad Social)</td>
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<td>European Standardisation Committee</td>
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<td>European Committee for Electrotechnical Standardisation</td>
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<td>CEPAL</td>
<td>Comisión Económica para América Latina (ECLAC)</td>
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<td>CFIA</td>
<td>Costa Rican Association of Engineers and Architects (Colegio Federado de Ingenieros y Arquitectos)</td>
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<td>CGR</td>
<td>Costa Rican Office of the Comptroller General of the Republic (Contraloría General de la Republica)</td>
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<td>Costa Rican Centre of Information on Technical Barriers to Trade (Centro de Información sobre Obstáculos Técnicos al Comercio)</td>
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<td>Costa Rican Investment Promotion Agency (Coalición Costarricense de Iniciativas de Desarrollo)</td>
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<td>International Committee for Weights and Measures (Comité Internacional de Pesos y Medidas)</td>
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<td>Costa Rican Inter-institutional Commission for the Protection of Intellectual Property (Comisión Interinstitucional para la Protección de la Propiedad Intelectual)</td>
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<td>Abbreviation</td>
<td>Full Form</td>
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<td>CNP</td>
<td>Costa Rican National Production Council (Consejo Nacional de Producción)</td>
</tr>
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<td>Costa Rican National Quality Council (Consejo Nacional para la Calidad)</td>
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<td>Pan American Technical Standards Commission (Comisión Panamericana de Normas Técnicas)</td>
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<td>Costa Rica’s Competition Commission (Comisión para Promover la Competencia)</td>
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<td>CNFL</td>
<td>Costa Rican National Power and Light Company (Compañía Nacional de Fuerza y Luz)</td>
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<td>CNT</td>
<td>Costa Rican National Catalogue of Formalities (Catalogo Nacional de Tramites)</td>
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<td>German Standardisation Institution (Deutsches Institut für Normung)</td>
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<td>DSM</td>
<td>Dispute Settlement Mechanism</td>
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<td>Economic Commission for Latin America</td>
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<td>European Union</td>
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<td>FAUCA</td>
<td>Central American Single Customs Form (Formulario Aduanero Único Centroamericano)</td>
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<td>Foreign Direct Investment</td>
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<td>General Agreement on Trade in Services</td>
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<td>GDP</td>
<td>Gross Domestic Product</td>
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<td>HH</td>
<td>Herfindahl-Hirschman (concentration Index)</td>
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<td>Harmonised System (of Tariff Classification)</td>
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<td>IAAC</td>
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<td>IAF</td>
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<td>ICE</td>
<td>Costa Rican national electricity utility (Instituto Costarricense de Electricidad)</td>
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<td>Acronym</td>
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<tr>
<td>ICT</td>
<td>Information and Communication Technologies</td>
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<td>IEC</td>
<td>International Electrotechnical Commission</td>
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<td>IFAM</td>
<td>Costa Rican Institute for Municipal Development and Advice (Instituto de Fomento y Asesoría Municipal)</td>
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<td>ILAC</td>
<td>International Laboratory Accreditation Cooperation</td>
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<td>IMF</td>
<td>International Monetary Fund</td>
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<td>INS</td>
<td>Costa Rican National Insurance Institute (Instituto Nacional de Seguros)</td>
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<td>INTECO</td>
<td>National Standardization Institute (Instituto de Normas Técnicas de Costa Rica)</td>
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<td>IPR</td>
<td>Intellectual Property Rights</td>
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<td>IRAM</td>
<td>Argentine Standardisation and Certification Institute (Instituto Argentino de Normalización y Certificación)</td>
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<td>ISO</td>
<td>International Organisation for Standardisation</td>
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<td>ITA</td>
<td>Information Technology Agreement</td>
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<td>ITC</td>
<td>International Trade Centre</td>
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<td>LAC</td>
<td>Latin America and the Caribbean</td>
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<td>LACOMET</td>
<td>Costa Rican Metrology Laboratory (Laboratorio Costarricense de Metrología)</td>
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<td>LPI</td>
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<td>MAG</td>
<td>Costa Rican Ministry of Agriculture (Ministerio de Agricultura)</td>
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<td>MEIC</td>
<td>Costa Rican Ministry of Economy, Industry and Commerce (Ministerio de Economía, Industria y Comercio)</td>
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<td>MFN</td>
<td>Most-Favoured Nation</td>
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<td>MICITT</td>
<td>Costa Rican Ministry of Science, Technology and Telecommunications (Ministerio de Ciencia, Tecnología y Telecomunicaciones)</td>
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<td>MIDEPLAN</td>
<td>Costa Rican Ministry of Planning and Economic Policy (Ministerio de Planificación Nacional y Política Económica)</td>
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<td>MINAE</td>
<td>Costa Rican Ministry of Environment and Energy (Ministerio de Ambiente y Energía)</td>
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<td>MLA</td>
<td>Multilateral Recognition Arrangement</td>
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<td>MNEs</td>
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<td>MOPT</td>
<td>Costa Rican Ministry of Public Works and Transport (Ministerio de Obras Públicas y Transporte)</td>
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<td>MOR</td>
<td>Market Openness Review</td>
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<td>MRA</td>
<td>Mutual Recognition Agreement</td>
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<td>MS</td>
<td>Costa Rican Ministry of Health (Ministerio de Salud)</td>
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<td>NFPA</td>
<td>National Fire Protection Association</td>
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<td>OAS</td>
<td>Organisation of American States</td>
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<td>ODECA</td>
<td>Organisation of Central American States (Organización de Estados Centroamericanos)</td>
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<td>OECD</td>
<td>Organisation for Economic Cooperation and Development</td>
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<td>OGP</td>
<td>Open Government Partnership</td>
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<td>ONNUM</td>
<td>Costa Rican National Bureau of Standards and Units of Measure (Oficina Nacional de Normas y Unidades de Medida)</td>
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<td>Costa Rican Technical Regulations Body (Órgano de Reglamentación Técnica)</td>
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<td>Patent Cooperation Treaty</td>
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<td>PND</td>
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<td>Abbreviation</td>
<td>Full Name</td>
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<tr>
<td>PNRT</td>
<td>Costa Rican National Plan for Technical Regulations (Plan Nacional de Reglamentación Técnica)</td>
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<td>Purchasing power parity</td>
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<td>Preferential Trade Agreement</td>
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<td>Radiográfica Costarricense</td>
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<td>Research and Development</td>
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<td>Costa Rican Registry for Copyright and Related Rights (Registro de Derechos de Autor y Derechos Conexos)</td>
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<td>Costa Rican Oil Refinery (Refinadora Costarricense de Petróleo)</td>
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<td>REER</td>
<td>Real effective exchange rate</td>
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<td>Society of Automotive Engineers</td>
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<td>Single Customs Declaration</td>
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<td>Costa Rican Online Legal Information System (Sistema Costarricense de Información Jurídica)</td>
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<td>Costa Rican National Animal Health Service (Servicio Nacional de Salud Animal)</td>
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<td>SETENA</td>
<td>Costa Rican National Technical Secretariat for Environment (Secretaría Técnica Nacional Ambiental)</td>
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<td>SFE</td>
<td>Costa Rican State Phytosanitary Service (Servicio Fitosanitario del Estado)</td>
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<td>Central American Integration System (Sistema de la Integración Centroamericana)</td>
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<td>Costa Rican Integrated System of Government Procurement (Sistema Integrado de Compras Públicas)</td>
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<td>Costa Rican online information system on legislation in force (Sistema Nacional de Legislación Vigente)</td>
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<td>Acronym</td>
<td>Description</td>
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<td>SINPE</td>
<td>Costa Rican National Electronic Payment System (Sistema Nacional de Pagos Electrónicos)</td>
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<td>SMEs</td>
<td>Small and medium-sized enterprises</td>
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<td>Costa Rican Customs (Servicio Nacional de Aduanas)</td>
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<td>Treaty on Investment and Trade in Services</td>
</tr>
<tr>
<td>TISA</td>
<td>Trade in Services Agreement</td>
</tr>
<tr>
<td>TNA</td>
<td>Costa Rican National Customs Tribunal (Tribunal Nacional de Aduanas)</td>
</tr>
<tr>
<td>TPP</td>
<td>Trans-Pacific Partnership</td>
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<tr>
<td>TPR</td>
<td>Trade Policy Review</td>
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<td>TR</td>
<td>Technical Regulation</td>
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<tr>
<td>TRA</td>
<td>Administrative Registration Tribunal (Tribunal Registral Administrativo)</td>
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<tr>
<td>TRIPs</td>
<td>Trade-related Intellectual Property Rights</td>
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<tr>
<td>TRS</td>
<td>Time Release Study</td>
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<tr>
<td>TTIP</td>
<td>Transatlantic Trade and Investment Partnership</td>
</tr>
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<td>UCCAEP</td>
<td>Costa Rican Union of Chambers and Associations of the Private Business Sector (Unión Costarricense de Cámaras y Asociaciones del Sector Empresarial Privado)</td>
</tr>
<tr>
<td>UL</td>
<td>Underwriters Laboratories Inc.</td>
</tr>
<tr>
<td>VUCE</td>
<td>Costa Rican Single Window for Foreign Trade (Ventanilla Única de Comercio Exterior)</td>
</tr>
<tr>
<td>UNCTAD</td>
<td>United Nations Conference on Trade and Development</td>
</tr>
<tr>
<td>WCO</td>
<td>World Customs Organization</td>
</tr>
<tr>
<td>WDI</td>
<td>World Development Indicators</td>
</tr>
<tr>
<td>WIPO</td>
<td>World Intellectual Property Organisation</td>
</tr>
<tr>
<td>WTO</td>
<td>World Trade Organization</td>
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</tbody>
</table>
EXECUTIVE SUMMARY

Open trade and investment policies have been an important part of Costa Rica’s social and economic transformation since the 1980s. The country’s outward-oriented strategy of FDI attractiveness and export-led growth has helped modernise its economy and improve the overall business climate. The process of trade liberalisation has occurred through unilateral lowering of tariffs and the negotiation of free trade agreements. It has been supported by structural policy reform, in particular the dismantling of an import-substitution model and by a determined policy to attract FDI, transforming Costa Rica’s export profile, diversifying its export basket and helping it integrate into global value chains.

This review is prepared under the auspices of the OECD Trade Committee and in accordance with the Roadmap for the Accession of Costa Rica to the OECD Convention [C(2015)93/FINAL]. The Trade Committee is one of the 22 OECD technical committees mandated by the OECD Council to carry out an accession review of Costa Rica. The review is undertaken in accordance with Scoping Paper TAD/TC/WP(2013)32, Planning for a Market Openness Review of Costa Rica, examines a range of trade-related policies in Costa Rica and suggests possible areas for reform. The scope of the review covers a number of the Trade Committee’s standard market openness issues, including transparency, non-discrimination, trade restrictiveness, customs efficiency, the use of international standards and conformity assessment procedures, and the level of protection of intellectual property rights. It is submitted to the Trade Committee for further discussion with a view to informing the Committee’s accession review of Costa Rica and the Committee’s formal opinion to Council evaluating Costa Rica’s willingness and ability to implement any substantive legal instruments within the Committee’s competence and evaluating Costa Rica’s policies and practices as compared to OECD best policies and practices in the area of trade.

The report underscores Costa Rica’s significant progress in undertaking reforms in the policy areas covered under this review to develop a regulatory framework that is supportive of trade and investment. In some areas, reforms are still taking place and the policy framework is only maturing. A number of challenges lie ahead in order to enhance both the productivity and competitiveness of the economy, in particular as regards transparency in the area of government procurement, administrative simplification, and the improvement of intellectual property protection and enforcement. However, Costa Rica is working towards addressing many of these challenges, aligning its policies with OECD best-practice and introducing new structural reform initiatives, including trade-related policies such as improved regulatory quality and increased international recognition of that quality as well as a range of trade facilitation measures.

In general, Costa Rica has achieved transparency and accountability in its regulatory, trade and investment framework. Further reforms are being implemented to reinforce the consultation processes and increase competition and regulatory predictability, which in particular is needed in sectors in which the government still has major participation and control, including telecommunications, energy, insurance and banking. In addition, the complexity and fragmentation of its government procurement mechanisms make them extremely difficult to comprehend and greatly reduce the capacity of potential entrants to access the concerned markets. Costa Rica is aware of the shortcomings of the current system and has very recently put in place initiatives to streamline the process, the effects of which will have to be assessed in the short to medium term.

Costa Rica’s has also made significant advances in improving the overall business climate and pursuing least trade restrictiveness, in particular by introducing mechanisms to assess the impact of domestic regulations on the economy and promote regulatory improvement, and by introducing new trade facilitation measures. Its efforts at administrative simplification and automation have started to bear fruit,
but should be continued in order to gradually address the various burdensome formalities that have hindered the country’s aim to step up its competitiveness. Trade facilitation measures should also be further supported by concerted efforts to improve Costa Rica’s transport, port and border crossing infrastructure.

Costa Rica’s ambitious policy in favour of intellectual property rights (IPR) protection as part of the country’s strategy to improve the investment climate and attract foreign investors has produced a well-developed legal framework. On the other hand, protection in practice and enforcement still presents some challenges, in particular in terms of copyright piracy and trademark counterfeiting. As a result, IP instruments are not widely used by domestic industry. Costa Rica has recently taken actions to address factors hampering effective enforcement by boosting institutional enforcement capacity but results remain to be seen.

Beyond these challenges, the report highlights that the non-discrimination principle is generally applied in Costa Rica’s overall regulatory, trade and investment framework and there are few national treatment exceptions, apart from areas of services trade.¹ Likewise, it emphasises the country’s efficient policies in favour of internationally harmonised standards and conformity assessment procedures and accreditation practices that promote mutual recognition and address regulatory divergence. Finally, Costa Rica’s record of compliance with international rulings on trade and investment matters is good. This liberalisation and reform work should continue, bringing with it benefits in the form of reduced costs of trading and doing business.

¹ The calculation of Costa Rica’s STRI is still work in progress and the report’s assessment in this area is preliminary.
MARKET OPENNESS REVIEW OF COSTA RICA

1. Costa Rica’s successful social and economic transformation since the 1980s is widely recognised and documented. In the past thirty years, Costa Rica has based its development strategy on an outward-oriented, export-led growth; openness to foreign direct investment (FDI) and gradual trade liberalisation. This strategy has contributed to the modernisation of its economy, to sustained economic growth and to its successful integration into the global economy.

2. The economy grew at an annual average rate of 5.5% throughout the 1990s and generally outpaced the average growth rate for the region in the current millennium. Between 1994 and 2013, the volume of Costa Rica’s exports of goods increased at an average of 9% annually. In 2013, exports of goods and services accounted for 35.14% of Costa Rica’s gross domestic product (GDP).

3. The process of trade liberalisation has been conducted through a unilateral lowering of tariffs and the elimination of other import taxes as well as through the negotiation of free trade agreements. It has also been supported by structural policy reform, in particular the dismantling of an import-substitution model and by a determined policy to attract FDI. This policy has played a crucial role in the transformation of Costa Rica’s export profile, particularly in the diversification of its export basket and in its insertion into global value chains (GVCs). Significant reforms have also been undertaken in the financial and the telecommunication services sector.

4. Costa Rica’s macroeconomic policies have contributed to the creation of a stable and attractive environment for domestic and international investors and traders and to the increase of population’s living standards. Despite those achievements, Costa Rica has been pursuing efforts to boost its competitiveness and to take full advantage of its integration into GVCs; to promote linkages between multinational enterprises (MNEs) and local small and medium-sized enterprises (SMEs); to further develop human capital and a quality-based labour market; to increase financial resources for innovation and research and development (R&D); to address the lack of adequate infrastructure and logistics and to reduce fiscal deficit, among other challenges. These priority areas correspond, indeed, to the main challenges facing the country today and are addressed in the current National Development Plan (Plan Nacional de Desarrollo, PND) 2015-2018, which sets the framework for related action.

5. This review takes a detailed look at a range of trade-related policies, based on the OECD Principles of Market Openness [TD/TC/WP(2002)25/FINAL], and suggests possible areas for reform. Aspects

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2 Some of the publications can be found in the “References” section at the end of this document.
4 UN ComTrade Database (2014).
5 World Development Indicators (WDI).
7 MIDEPLAN, viewed at http://www.mideplan.go.cr/component/content/article?id=1273. The PND is based on three main pillars: 1. Fostering economic growth and generating quality employment; 2. Combating poverty and reducing inequality; 3. An open, transparent and efficient government, in fight against corruption.
covered include the degree of transparency of the regulatory system, the respect of non-discrimination principles, the ability to ensure that domestic regulations are no more burdensome that necessary to achieve their policy objective, customs efficiency, the use of international standards and the effectiveness of conformity assessment procedures, and the level of protection of intellectual property rights.

1. Economic and policy environment

6. With a GDP of USD 49.62 billion in 2013, Costa Rica is classified as an upper middle-income economy by the World Bank, with a per capita income (PPP adjusted) of USD 13,865 in 2013, slightly below the LAC average (USD 14,536) and at about a third of the OECD average (USD 37,966). Costa Rica is “the second largest economy in Central America, after Guatemala and the second wealthiest in that region closely behind Panama, the eighth in Latin America and the twelfth in the overall Latin America and Caribbean (LAC) region”.

7. Costa Rica has managed to significantly reduce poverty levels (to levels among the lowest in the LAC region) and to raise living standards. Despite those efforts, the Poverty Headcount Ratio was 22.4% in 2014. Inequality also has increased. The Gini coefficient of labour income shifted from 0.505 in 2010 to 0.512 in 2014, which is higher than the OECD average (0.32), and very close to Chile (0.508) and Mexico (0.481) that top the OECD list.

8. The economy grew at an annual average rate of 5.5% throughout the 1990s and generally outpaced the average growth rate for the (LAC) region in the current millennium (see Figure 1 below). Growth decelerated in 2013 “short of the estimated 4.25% trend, largely on account of weaker consumption and net exports. Growth gained some speed in early 2014, as feeble imports and stronger investment offset sluggish exports”. Output growth was around 3.5% in 2014 and the Central Bank estimated an increase of 3.4% in 2015 and 4.1% in 2016, respectively. These variations incorporate the effect of the withdrawal of Intel’s manufacturing operations, the weather phenomenon “El Nino Southern Oscillation” in 2014, as well as improved terms of trade.

8 Expressed in current US dollars. WDI.
9 WDI.
10 Latin America & Caribbean (developing only). WDI.
11 WDI.
14 Instituto Nacional de Estadísticas y Censos.
20 The relocation of Intel’s manufacturing operations closer to the company’s target markets in Asia was offset by the shift to higher-value-added research and development activities through the establishment of a laboratory for testing all prototypes of the company’s products. The impact was also compensated by the
9. Costa Rica’s Central Government deficit widened to 5.7% of GDP in 2014 and the central government debt reached 39.3% at the end of 2014. Fiscal reforms aimed at reducing the deficit have been qualified as “a national priority” by the IMF in the Concluding Statement of the 2014 Article IV Consultations. IMF projections indicate that Costa Rica’s fiscal deficit will reach 6% of GDP in 2015 and remain at about that level through 2019.

10. The IMF mission concluding statement also indicated the need to pursue structural reforms to reach the goals of boosting growth and competitiveness and recommended, among other actions, “increasing private sector participation in the energy sector and reviewing tariff setting procedures to better reflect changes in costs” as well as “stimulating competition in the banking sector, fostering capital market development, addressing infrastructure bottlenecks, and streamlining business regulations”.

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Source: WDI.

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development of the life sciences and medical devices sector, which nowadays comprises 60 firms and accounts for over 22% of Costa Rica’s goods exports.


Banco Central de Costa Rica (BCCR)


1.1 Trade policy developments

11. This section focuses on aspects of relevance to the country’s trade policy, including recent trade policy developments and economic trends that may affect the country’s competitiveness and diversification efforts. A detailed overview of the country’s investment policy framework and of its macroeconomic situation and priorities for its structural policies agenda can be found in the OECD Investment Review of Costa Rica\(^{27}\) and the upcoming OECD Economic Policy Review of Costa Rica.

12. From 1983 to 2006 Costa Rica controlled its currency (colon) “through a daily crawling peg system which depreciated the currency in line with the difference in inflation rates between Costa Rica and its leading developed country trading partners”.\(^{28}\) In 2006, Costa Rica’s Central Bank introduced an exchange-rate band system, with a view to a gradual migration towards a managed floating exchange-rate system, which entered in force in January 2015. The real effective exchange rate (REER) appreciated by about 31% between 2004 and 2014, undermining the competitiveness of exports of goods and services (particularly inbound tourism), but in 2014, “the colon depreciated about 7%, largely correcting the appreciation from the last decade ... broadly restoring competitiveness”.\(^{29}\)

13. In February 2015, the Central Bank considered that macroeconomic conditions were appropriate to migrate towards a managed floating exchange rate regime. Based on this regime, it shall intervene to avoid “abnormal” fluctuations in the exchange rate, without interrupting the trend of the variables that determine it. The BCCR does not envisage substantial variations in the exchange rate as a consequence of this migration.\(^{30}\)


14. As noted above, a very renowned characteristic of Costa Rica is the successful diversification of its economy and the transformation of its export profile, which up until the 1960s was dominated by a few agricultural goods (mainly bananas, coffee, sugar and beef). As an illustration of the above, in 2013 exports of the primary sector\(^{31}\) accounted for 8.4% of GDP (compared to 16.4% on average during the 1980s), while the share of GDP of services sector exports was 16.6%. Greater diversification “has supported more stable terms of trade and made the economy less vulnerable to adverse weather, commodity price movements, and other shocks”\(^{32}\). It is worth noting that between 1996 and 2013, the number of goods in Costa Rica’s export basket increased from 2,907 to 4,473 (including electronics, medical devices, automotive, aerospace/aeronautics and film/broadcasting devices), as did the export basis (from 1,453 to 2,473) companies and the number of markets (from 136 to 153).\(^{33}\) In addition to new export destinations\(^{34}\), which however do not represent more than 0.25% of its total exports, Costa Rica reinforced significantly its presence in a number of previously marginal destinations, such as Malaysia (where the value of Costa Rican exports multiplied by 1,480), Lithuania (value of exports multiplied by 800); the People's Republic of China (hereafter ‘China’) (value of exports multiplied by 795); Viet Nam (value of

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\(^{31}\) Agricultural materials (SITC 0+ SITC 1+ SITC 2 (except 27 and 28) + SITC 4). OECD calculations based on UN ComTrade.


\(^{34}\) The top ten new destinations are Algeria, Libya, Andorra, Ghana, Slovenia, Myanmar, Latvia, Georgia, Sierra Leone and Qatar.
exports multiplied by 190), Indonesia; Cote d'Ivoire; Croatia; Greece; Ireland; Thailand; Cuba; India; Gabon; New Zealand; Hong Kong, China; and the Dominican Republic.

**Figure 3. Terms of trade**

Index 2000=100

![Graph showing terms of trade for Costa Rica, Australia, China, Chile, Mexico, and Canada from 2000 to 2013.](image)

**Source:** WDI and National sources for Costa Rica.

15. Despite its achievements, Costa Rica faces significant challenges in terms of competitiveness, as identified in studies and reviews conducted by the World Bank, the Economic Commission for Latin America (ECLAC), the OECD Investment Committee and Costa Rica’s academic sector. The report “Estado de la Nación 2014”, published under the auspices of the National Council of Rectors (CONARE) identifies high domestic production costs as one of the factors causing loss of competitiveness. As an illustration of this fact, the report points to a survey conducted by the Union of Chambers and Associations of the Private Business Sector (Unión Costarricense de Cámaras y Asociaciones del Sector Empresarial Privado, UCCAEP), in which 61% of companies reported an

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36 The Consejo Nacional de Rectores (CONARE) is composed of the four Costa Rican public universities. Published since 1994 in the framework of CONARE’s research programme “Programa Estado de la Nación” (PEN), the report Estado de la Nacion has provided on a yearly basis information on issues relevant to the design of public policies, as well as critical opinion by citizens on strategic issues at both the domestic and the regional level. Viewed at: [http://www.estadonacion.or.cr/](http://www.estadonacion.or.cr/)

37 Informe Estado de la Nacion 2014, viewed at: [http://www.estadonacion.or.cr/20/]. The “Estado de la Nación” report also points to the fact that based on an international comparison, Costa Rica is 20% more expensive than the Latin American average (per capita GDP PPP).

38 “Pulso Empresarial”, is a quarterly survey aimed at monitoring and forecasting Costa Rica’s business environment. The survey is based on three indicators: “el Índice Empresarial de Percepción” (IEP), el “Índice
increase in production costs, with electricity and fuel prices topping the list of factors that have contributed to such an increase.39

16. The impact of a highly regulated, state-controlled electricity market is consistently at the centre of private sector concerns, and of calls for a significant reform of the system. Currently, the state-owned national electricity utility (Instituto Costarricense de Electricidad, ICE), holds the concession for the distribution and commercialisation of electricity, and has a de facto monopoly in the transmission of electricity.40 Limited private participation is only allowed in the segment of electricity generation;41 ICE is the sole buyer of privately generated electricity. Costa Rica’s Competition Commission (Comisión para Promover la Competencia, COPROCOM), which has the power to investigate and sanction anticompetitive conduct in the electricity generation market, considers this market to be “highly limited and regulated”.42

17. Between 2010 and 2011, two initiatives for reforms in the electricity sector were submitted to Congress. The first one, General Electricity Bill 17.812, aimed to “establish the legal and institutional framework for promoting the electrical development of the country on the basis of renewable energy, guaranteeing competitive prices and quality service, … incorporating regulated competition into the wholesale electricity market, consolidating the universality and solidarity of the service in a non-discriminatory manner, while modernising the electricity networks”. Since the bill proposed long-term changes that could not be swiftly implemented, the Government submitted the Electrical Contingency Bill 18.093 aimed at “guaranteeing in the short term the supply of energy to the benefit of the consumer, along with actions to incorporate into the national electricity system a greater generation capacity with renewable energies through more active participation by the private sector in project development; the implementation of small-scale distributed generation projects with access to the network and the development of programs and projects promoting energy efficiency, savings and rational use”.43

18. COPROCOM, consulted on both drafts by the Special Assessment Committee (Comisión Dictaminadora Especial) in Congress, recommended to “improve the competition regime” as well as to ensure “the application of the principles of equality and non-discrimination for new entrants to the market”. In October 2014 the Government launched a National Dialogue on Electricity44 with the participation of representatives from the government, the private sector, academia and civil society, in

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The Survey covers a period ranging from November 2013 to November 2014. 280 companies were asked to refer to the three main factors that had “put pressure” on production costs. The answers were the following (31% electricity tariffs, 19% fuel prices and 12% “others”).

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40 Law 7200 on Autonomous or Parallel Generation (Ley de Generación Autónoma o Paralela).


43 http://www.dialegoenergacr.com This dialogue is now followed by a National Dialogue on Transport and Fuels, organised between March and May 2015.
order to find a comprehensive solution to the energy problem. The dialogue led to the elaboration of the VII National Plan for Energy, which is expected to be submitted to public consultations over April 2015. Taking into account the ongoing discussions the government withdrew its support for the Electrical Contingency Bill 18.093 in November 2014, in the face of opposition from ICE, which estimated that an increase in private electricity generation was unjustified, and of views from private sector representatives that none of the bills would have brought an effective solution to the major challenges faced in terms of competitiveness, which, according to Costa Rican academia, include the role of public monopolies and oligopolies in the energy, fuel and transport sectors. A draft law on Electricity Generation from Biomass (18.181), aimed at eliminating the limit of 15% to private electricity generation if the electricity is generated from biomass is still under discussion in Congress, but no further legislative changes to the current system are envisaged for the time being.

19. Another factor appearing to influence the country’s competitiveness, according to the reviews cited above, relates to low labour productivity and high logistics costs due to the lack of adequate infrastructure. “Estado de la Nación” points to the fact that, despite Costa Rica’s success in export growth and export diversification, the dynamism of the export sector’s productivity has not permeated the rest of the economy. The report states that the insufficient level of qualification of most workers prevents them from joining the most dynamic productive sectors.

![Figure 4. Annual labour productivity growth by sector](source)

**Source:** Costa Rican Central Bank.

20. As part of its outward oriented strategy, Costa Rica has been a very strong supporter of the multilateral trading system and a very active Member in both the regular and the negotiating bodies of the

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46 [http://www.nacion.com/opinion/foros/Aspiremos-pais-competitivo-equitativo_0_1467653225.html](http://www.nacion.com/opinion/foros/Aspiremos-pais-competitivo-equitativo_0_1467653225.html)
47 Ibid.
World Trade Organisation (WTO). Currently, Costa Rica also participates in the negotiations of the Trade in Services Agreement (TISA), the Information Technology Agreement (ITA) and the Environmental Goods Initiative. Costa Rica has also been a very active player in the negotiation of Free Trade Agreements (FTA’s). In 1994, the country “started an era of PTA negotiations as a building block to improve and deepen access to foreign markets for Costa Rican exports. As FDI establishing in Costa Rica is mostly directed at exporting, building a strong export platform based on PTAs became also a key component of the investment promotion policy.”

21. Nowadays, Costa Rica has 13 FTAs in force with 48 trading partners (see Table 1 below). Such agreements cover 84.9% of its exports and 82.6% of its imports. Costa Rica has expanded its network of FTAs (that extensively covers the Americas), to other regions of the world (China, Singapore, the EU and the EFTA countries). Two more FTAs (with Colombia and with other CARICOM countries) have also been signed but are not yet in force. Once these two FTAs are in force, Costa Rica’s preferential treatment will be extended to a total of 57 trading partners and will cover 85% of current trade. Furthermore, in June 2015 Costa Rica initiated FTA negotiations with Korea and has undertaken internal analysis and consultations in order to define a roadmap regarding accession to the Pacific Alliance (PA).

22. There are some overlaps in terms of country coverage between provisions under CAFTA-DR and the FTA between Central America and the Dominican Republic. Based on the “coexistence” of provisions, economic operators are entitled to select the one that is more favourable to their particular circumstances. For instance, a Costa Rican firm exporting to another CACM country can use the “Formulario Aduanero Unico Centroamericano” (FAUCA) or “self-certification” under CAFTA-DR. Although there have been suggestions to streamline overlapping provisions within the same network of international agreements, Costa Rican authorities are not contemplating taking such action, pointing to the fact that, beyond the training of customs officials in handling such overlapping provisions, this “coexistence” has not led to difficulties in their implementation.

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48 Costa Rica is a member of the “Cairns” Group and the “Tropical Products” Group; of the “Friends of Antidumping Negotiations” (FANs); the “Joint Proposal” in Trade-related Intellectual Property Rights; the “Colorado Group” in Trade Facilitation. Costa Rica chairs the Special Session of the Dispute Settlement Body.


50 Jamaica, Suriname, Saint Lucia, Antigua and Barbuda, Grenada, Dominica, Saint Vincent and the Grenadines, Saint Kitts and Nevis


# Table 1. Free Trade agreements concluded by Costa Rica

<table>
<thead>
<tr>
<th>Agreement</th>
<th>Partners</th>
<th>Entry into force (dd/mm/yyyy)</th>
</tr>
</thead>
<tbody>
<tr>
<td>General Treaty on Central American Economic Integration</td>
<td>El Salvador, Guatemala, Honduras, Nicaragua</td>
<td>23/09/1963</td>
</tr>
<tr>
<td>Free Trade Agreement between the Government of the United Mexican States</td>
<td>Mexico</td>
<td>01/01/1995 Update 01/07/2013</td>
</tr>
<tr>
<td>and the Republic of Costa Rica, El Salvador, Guatemala, Honduras and</td>
<td></td>
<td></td>
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<tr>
<td>Nicaragua</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Free Trade Agreement between Central America and Chile; and Bilateral</td>
<td>Chile</td>
<td>15/02/2002</td>
</tr>
<tr>
<td>Protocol between the Republic of Costa Rica and Chile</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Free Trade Agreement between Central America and the Dominican Republic;</td>
<td>Dominican Republic</td>
<td>07/03/2002</td>
</tr>
<tr>
<td>and Bilateral Protocol between Costa Rica and the Dominican Republic</td>
<td></td>
<td></td>
</tr>
<tr>
<td>and the Government of Canada</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Free Trade Agreement between the Republic of Costa Rica and the Caribbean</td>
<td>Trinidad and Tobago</td>
<td>15/11/2005</td>
</tr>
<tr>
<td>Community</td>
<td>Guyana</td>
<td>30/04/2006</td>
</tr>
<tr>
<td></td>
<td>Barbados</td>
<td>01/08/2006</td>
</tr>
<tr>
<td></td>
<td>Belize</td>
<td>10/03/2011</td>
</tr>
<tr>
<td>Free Trade Agreement between Central America and Panama; and Bilateral</td>
<td>Panama</td>
<td>24/11/2008</td>
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<tr>
<td>Protocol between Costa Rica and Panama</td>
<td></td>
<td></td>
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<tr>
<td>Free Trade Agreement between the Dominican Republic, Central America and</td>
<td>United States, El Salvador,</td>
<td></td>
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<tr>
<td>the United States*</td>
<td>Grace America, Nicaragua, Dominican Republic</td>
<td></td>
</tr>
<tr>
<td>Free Trade Agreement between Costa Rica and the People's Republic of China</td>
<td>China</td>
<td>01/08/2011</td>
</tr>
<tr>
<td>Free Trade Agreement between the Government of the Republic of Costa Rica</td>
<td>Peru</td>
<td>01/06/2013</td>
</tr>
<tr>
<td>and the Government of the Republic of Peru</td>
<td></td>
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<tr>
<td>Free Trade Agreement between the Government of the Republic of Costa Rica</td>
<td>Singapore</td>
<td>01/07/2013</td>
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<tr>
<td>and the Government of the Republic of Singapore</td>
<td></td>
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<tr>
<td>Agreement of Association between the European Union and its Members,</td>
<td>EU-27</td>
<td>01/10/2013</td>
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<tr>
<td>on one side, and Central America, on the other **</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Free Trade Agreement between Central America and the European Free Trade</td>
<td>Iceland, Liechtenstein, Norway, Switzerland</td>
<td>19/08/2014 for Norway; 29/08/2014 for Switzerland; 05/09/2014 for Iceland.</td>
</tr>
<tr>
<td>Association</td>
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<td></td>
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<tr>
<td>Not in force</td>
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<td></td>
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<tr>
<td>Jamaica</td>
<td>Implementation approved by Jamaican Government in April 2013. Pending</td>
<td></td>
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<tr>
<td></td>
<td>entry into force</td>
<td></td>
</tr>
<tr>
<td>Suriname</td>
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<tr>
<td>Saint Lucia</td>
<td>Pending legislative approval of their respective countries</td>
<td></td>
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<tr>
<td>Antigua and Barbuda</td>
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<tr>
<td>Grenada</td>
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<td>Dominica</td>
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<tr>
<td>Saint Vincent and the Grenadines</td>
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<tr>
<td>Saint Kitts and Nevis</td>
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<tr>
<td>Free Trade Agreement between the Republic of Costa Rica and the Caribbean</td>
<td>Colombia</td>
<td>Signed on May 22, 2013. Pending legislative approval by Colombia.</td>
</tr>
<tr>
<td>Community</td>
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</tbody>
</table>

* Refers to trade with the United States and Puerto Rico.
** Refers to trade with the European Union (EU-27), Croatia is not included.
Source: Ministerio de Comercio Exterior (COMEX).
23. Costa Rica has signed 21 bilateral investment treaties (BIT’S); out of which 14 are in force. Where BITs were already signed between parties, subsequent FTAs generally refer to them, rather than include a full chapter on investment, as is the case in the FTA between Chile and Central America, and in FTAs with Canada and China. In other FTA’s, a full chapter on investment was negotiated (see Table 3 below).

Table 2. BITs signed and ratified by Costa Rica

<table>
<thead>
<tr>
<th>Country</th>
<th>Date of signature</th>
<th>Ratification</th>
<th>Date of entry into force</th>
</tr>
</thead>
<tbody>
<tr>
<td>Germany</td>
<td>13 September 1994</td>
<td>Law No. 7695 3 October 1997</td>
<td>24 April 1998</td>
</tr>
<tr>
<td>France</td>
<td>8 March 1984</td>
<td>Law No. 7691 3 October 1997</td>
<td>18 June 1999</td>
</tr>
<tr>
<td>Spain</td>
<td>8 July 1997</td>
<td>Law No. 7869 5 May 1999</td>
<td>17 July 1999</td>
</tr>
<tr>
<td>Canada</td>
<td>18 March 1998</td>
<td>Law No. 7870 5 May 1999</td>
<td>29 September 1999</td>
</tr>
<tr>
<td>Chile</td>
<td>11 July 1996</td>
<td>Law No. 7748 23 February 1998</td>
<td>23 June 2000</td>
</tr>
<tr>
<td>Czech Republic</td>
<td>21 October 1998</td>
<td>Law No. 8076 14 February 2001</td>
<td>5 March 2001</td>
</tr>
<tr>
<td>Argentina</td>
<td>21 May 1997</td>
<td>Law No. 8068 14 February 2001</td>
<td>1 May 2001</td>
</tr>
<tr>
<td>Venezuela</td>
<td>17 March 1997</td>
<td>Law No. 8067 14 February 2001</td>
<td>2 May 2001</td>
</tr>
<tr>
<td>Netherlands</td>
<td>21 May 1999</td>
<td>Law No. 8081 14 February 2001</td>
<td>1 July 2001</td>
</tr>
<tr>
<td>Korea</td>
<td>11 August 2000</td>
<td>Law No. 8217 8 March 2002</td>
<td>26 August 2002</td>
</tr>
<tr>
<td>Switzerland</td>
<td>1 August 2000</td>
<td>Law No. 8218 8 March 2002</td>
<td>19 November 2002</td>
</tr>
<tr>
<td>United Kingdom</td>
<td>7 September 1982</td>
<td>Ratified by Costa Rica</td>
<td>Not entered into force</td>
</tr>
<tr>
<td>El Salvador</td>
<td>21 November 1997</td>
<td>Archived</td>
<td>Not entered into force</td>
</tr>
<tr>
<td>Finland</td>
<td>28 November 2001</td>
<td>Archived</td>
<td>Not entered into force</td>
</tr>
<tr>
<td>Ecuador</td>
<td>6 December 2001</td>
<td>Archived</td>
<td>Not entered into force</td>
</tr>
<tr>
<td>Belgium and Luxembourg</td>
<td>26 April 2002</td>
<td>Archived</td>
<td>Not entered into force</td>
</tr>
<tr>
<td>Bolivia</td>
<td>7 October 2002</td>
<td>Archived</td>
<td>Not entered into force</td>
</tr>
<tr>
<td>China</td>
<td>24 October 2007</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Qatar</td>
<td>25 December 2010</td>
<td>Law No. 9099 17 January 2013</td>
<td></td>
</tr>
</tbody>
</table>


24. Costa Rica’s first experience as a member of a preferential trade agreement (PTA) dates back to the early 1960s, when the country joined the Central American Common Market (CACM). The CACM is an economic integration initiative launched in the early 1960’s with the participation of El Salvador, Guatemala, Honduras and Nicaragua, based on the General Treaty for the Central American Economic Integration. Costa Rica joined in 1963. Over the years, the scope of the initiative has broadened to incorporate topics such as rules of origin, sanitary and phytosanitary measures, dispute settlement, technical regulations and safeguard measures.

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53 Argentina, Canada, Chile, Czech Republic, France, Germany, Korea, Netherlands, Paraguay, Qatar, Spain, Switzerland, Venezuela, Chinese Taipei. A BIT was negotiated with Kuwait in 2013 but signature is pending.


<table>
<thead>
<tr>
<th>FTAs ratified</th>
<th>Entry into force</th>
<th>Investment provisions</th>
</tr>
</thead>
<tbody>
<tr>
<td>Mexico</td>
<td></td>
<td></td>
</tr>
<tr>
<td>No longer in force (substituted by Mexico modernisation)</td>
<td>1 January 1995</td>
<td>Chapter XIII on investment</td>
</tr>
<tr>
<td>Chile – Central America</td>
<td>15 February 2002</td>
<td>Chapter 10. BITs signed between Chile and the 5 CA countries form integral part of the treaty</td>
</tr>
<tr>
<td>Dominican Republic – Central America</td>
<td>7 March 2002</td>
<td>Chapter IX on investment</td>
</tr>
<tr>
<td>Canada</td>
<td>7 November 2002</td>
<td>Article VIII.2 notes the existence of the 1998 BIT between the parties</td>
</tr>
<tr>
<td>CARICOM (entered into force with 4 out of 15 CARICOM members) From 15 November 2005 to 10 March 2011</td>
<td>Chapter X on investment</td>
<td></td>
</tr>
<tr>
<td>Panama – Central America</td>
<td>24 November 2008</td>
<td>Chapter 10 on investment</td>
</tr>
<tr>
<td>CAFTA-DR</td>
<td>1 January 2009</td>
<td>Chapter Ten on investment</td>
</tr>
<tr>
<td>China</td>
<td>1 August 2011</td>
<td>In Article 89, the Parties reaffirm the commitments under the 2007 BIT. Chapter 9 covers commercial presence in services (mode 3)</td>
</tr>
<tr>
<td>Costa Rica – Peru</td>
<td>Entered into force on 1 June 2013</td>
<td>Chapter 12 on investment</td>
</tr>
<tr>
<td>Costa Rica – Singapore</td>
<td>Entered into force on 1 July 2013</td>
<td>Chapter 11 on investment</td>
</tr>
<tr>
<td>Central America – Mexico (modernisation)</td>
<td>Entered into force on 1 July 2013</td>
<td>Chapter XI on investment</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>FTAs signed</th>
<th>Signature</th>
<th>Investment provisions</th>
</tr>
</thead>
<tbody>
<tr>
<td>Central American Treaty on Trade in Services and Investment</td>
<td>24 March 2002 and amended on 22 February 2007 (pending ratification)</td>
<td>Chapter 3 on investment</td>
</tr>
<tr>
<td>Central America – European Union</td>
<td>1 October 2013</td>
<td>No chapter on investment but Chapter 6, Title III, on establishment</td>
</tr>
<tr>
<td>Colombia</td>
<td>22 May 2013 (pending ratification)</td>
<td>Specific chapter on investment</td>
</tr>
<tr>
<td>EFTA (European Free Trade Association)</td>
<td>19 August 2014 for Norway 29 August 2014 for Switzerland 5 September 2014 for Iceland</td>
<td>Chapter 4 covers trade in services and Chapter 5 covers investments</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>FTAs under negotiation</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Canada (modernisation)</td>
<td>This negotiation process was suspended</td>
</tr>
<tr>
<td></td>
<td>Specific chapter on investment</td>
</tr>
</tbody>
</table>


25. In 2007, the members of the CACM signed the “Framework Agreement Establishing the Central American Customs Union”, that entered into force for Costa Rica in 2009. The process towards building a customs union is based on the promotion of free movement of goods and trade facilitation; modernisation and regulatory convergence and institutional development. Progress in the implementation of the Customs Union is monitored through Action Plans, approved by the Council of Ministers for Economic Integration.
Box 1. The Central American Common Market

1960 - Signature of the General Treaty on the Central American Economic Integration establishing the Central American Common Market (CACM) by El Salvador, Guatemala, Honduras and Nicaragua. (Costa Rica joined in 1963). Members committed to the creation of a free trade area, to the adoption of a common external tariff and to the creation of a customs union. As a first step, Members committed to free trade in all products originating in the Members territory, with the exceptions listed in Annex A of the Treaty. Restrictions in all five countries apply to unroasted coffee and cane sugar; some bilateral restrictions apply to roasted coffee, sugar, ethyl alcohol, petroleum products and distilled alcoholic beverages. Costa Rica has bilateral restrictions on roasted coffee with all four CACM fellow countries.

1985 - Entry into force of the Convention on the Central American Tariff and Customs Regime, embodying the following provisions: the Central American Import Tariff (Annex A); the Central American legislation on customs valuation (Annex B); the Central American Uniform Customs Code (CAUCA) and its regulations (RECAUCA); the decisions and other tariff and customs provisions arising from the Convention.

1991 - Signature of the Tegucigalpa Protocol to the Charter of the Organization of Central American States (Organizacion de Estados Centroamericanos ODECA), establishing the Central American Integration System (Sistema de la Integración Centroamericana SICA), as the region’s institutional framework. This framework included all five original members plus Panama.

1993 - Signature of the Guatemala Protocol (amending the General Treaty on the Central American Economic Integration). The Protocol sets the new institutional framework of the Central American Economic Integration Subsystem (Subsistema de Integración Económica). The Guatemala Protocol was signed by the five Member States of the General Treaty and by Panama (although Panama formally acceded to SIECA in May 2013). Signatories committed to an enhanced free trade area and to the “gradual and progressive” creation of a Central American Customs Union. The Council of Ministers for Economic Integration (Consejo de Ministros de Integración Económica COMIECO) is SIECA’s main decision body for the integration process. SIECA’s administrative acts are expressed in Resolutions, Regulations, Agreements and Recommendation.

2007 - Signature (by all five CACM members) of the Framework Agreement for the Establishment of the Central American Customs Union, based on three stages: promotion of free movement of goods and trade facilitation; modernisation and regulatory convergence; and institutional development. The Agreement entered into force for Costa Rica in 2009.

2008 - Approval by COMIECO of modifications introduced to CAUCA and RECAUCA. CAUCA sets the basic customs legislation for CACM members while RECAUCA further develops the principles and commitments of members in the customs area. Provisions on Customs Valuation were incorporated into RECAUCA.

2013 – Panama joins the Central American Economic Integration Subsystem.

Source: Authors based on SIECA and WTO.

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57 In Costa Rica CAUCA entered into force in 2010; RECAUCA is not yet in force.
26. Tariff policy under the CACM is governed by the Convention on the Central American Tariff and Customs Regime\(^{58}\). COMIECO is the regional body responsible for making decisions regarding tariffs\(^ {59,60}\). The Tariff Policy Committee is the regional technical forum which analyses requests for tariff amendments based on the ranges set by the Convention\(^{61}\). Currently, the CACM common external tariff (ACI) comprises 6,976 eight-digit headings; by March 2015, the tariffs for 93.3% of the headings had been harmonised; the remaining 6.7%, for which harmonisation is pending, mainly concern vehicles, agricultural products and industrial products”.

27. In the area of regulatory convergence, harmonised technical regulations have been adopted and implemented in sectors such as processed food and beverages, medicines, drugs for veterinary use, hygienic products, cosmetics, fuels and fuel products and agricultural inputs.

28. The CACM members have also signed a Treaty on Investment and Trade in Services (TICS) and its Protocols, aimed at establishing a legal framework for the liberalisation of trade in services and investment between them.\(^ {62}\) Costa Rica has not ratified the TICS nor the Protocols.

**Figure 5. Intra-regional trade**

Share of trade flows of individual countries between the CACM members

![Intra-regional trade chart](chart.png)

*Source: UN ComTrade.*

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\(^{58}\) Articles 6, 7, 10, 22 of the Convention.

\(^{59}\) COMIECO resolution 263-2011 (COMIECO-LXI), approved modifications to the Central American Tariff Schedule (Sistema Arancelario Centroamericano SAC), incorporating the results of the Fifth Amendment to the Harmonised Commodity Description and Coding System (HS) of Tariff Nomenclature and the Customs Duties which entered into force in January 2012.

\(^{60}\) Parameters set by COMIECO for import tariffs are the following: 0% for raw materials and capital goods not produced in the region; 5% for raw materials produced in Central America; 10% for intermediate goods produced in Central America and 15% for final consumer goods. There are exceptions to these levels.

\(^{61}\) Based on Article 23 of the Convention, these range from 0% to 100% ad valorem nominal fee.

\(^{62}\) The TICS was signed in 2002 and it has been amended through two Protocols in 2007 and 2011, respectively. The TICS contains provisions on investment, cross-border trade, professional services, telecommunications, financial services, temporary entry of business people.
29. Costa Rica also participates in the activities of “Alianza del Pacífico”\footnote{http://alianzapacifico.net/que_es_la_alianza/la-alianza-del-pacifico-y-sus-objetivos/}, a regional integration initiative by Chile, Colombia, Mexico and Peru, aimed at facilitating trade and investment and at boosting productivity in the region. The meetings of the “Alianza” are open to observer countries from all over the world\footnote{By November 2014, Australia, Belgium, Canada, Costa Rica, Dominican Republic, Ecuador, El Salvador, Finland, France, Germany, Guatemala, Honduras, India, Israel, Italy, Japan, Korea, Morocco, Netherlands, New Zealand, People’s Republic of China, Panama, Paraguay, Portugal, Singapore, Spain, Switzerland, Trinidad and Tobago, Turkey, United Kingdom, United States and Uruguay.}. Costa Rica is an Observer State, already considered as candidate to become a Party to this initiative. A requirement for being a Member of this block is to have FTAs with all member countries, which is already the case of Costa Rica. Some of the initiative’s main goals include cooperation between the countries’ investment promotion agencies, exchange of experiences with single windows for trade, and introduction of an electronic system for certifications of origin, along with other trade facilitation measures. Member countries have by now removed visa requirements for each other’s citizens, are promoting student and professional exchanges, and have agreed on issuing joint tourist visas for third countries.

30. As a result of Costa Rica’s liberalisation and integration efforts described above, its average tariffs fell 39% over the last 17 years (Table 4) as did the tariffs faced by Costa Rican exporters abroad (37.5\%) (Figure 6). Costa Rica’s simple average tariff MFN is 5.57%. The average tariff on agricultural products (11.3\%) is three times higher than in industrial products (4.6\%). Despite the fact that Costa Rica’s tariffs are 20\% higher than the OECD average\footnote{The ratio is 65\% higher for consumer goods and almost 15\% higher for raw materials.}, 65\% of products (at a four-digit level) accounting for 62\% of total imports, have a tariff rate of less than or equal to 5\%. Among these products, 40\% of products accounting for 48\% of total imports have a zero tariff rate.

Table 4. Costa Rica’s simple and trade-weighted statutory tariffs

<table>
<thead>
<tr>
<th></th>
<th>OECD average</th>
<th></th>
<th>Costa Rica</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Total Trade</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Simple average</td>
<td>8.01</td>
<td>6.63 5.68 5.05 4.42 3.70</td>
<td>9.24 5.64</td>
<td>5.85 5.40 5.57 5.62</td>
</tr>
<tr>
<td>Capital goods</td>
<td>Simple average</td>
<td>5.16 3.77 3.06 2.28 2.36 1.87</td>
<td>4.57 1.43</td>
<td>1.49 1.28 1.23 1.23</td>
</tr>
<tr>
<td></td>
<td>Weighted average</td>
<td>3.61 2.76 2.25 1.46 1.24 1.14</td>
<td>5.47 1.22</td>
<td>1.05 1.02 1.03 1.10</td>
</tr>
<tr>
<td>Consumer goods</td>
<td>Simple average</td>
<td>10.28 8.88 7.89 7.01 6.41 5.43</td>
<td>15.30 10.23 10.58 9.83 9.82 9.88</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Weighted average</td>
<td>6.76 6.01 5.23 4.60 4.34 3.91</td>
<td>14.60 8.34</td>
<td>8.17 6.50 7.33 7.24</td>
</tr>
<tr>
<td>Intermediate goods</td>
<td>Simple average</td>
<td>7.03 5.61 4.48 3.88 3.30 2.69</td>
<td>6.33 3.58</td>
<td>3.69 3.36 3.29 3.32</td>
</tr>
<tr>
<td></td>
<td>Weighted average</td>
<td>4.65 4.02 2.96 2.56 2.22 1.61</td>
<td>5.24 2.90</td>
<td>2.84 2.77 2.79 2.86</td>
</tr>
<tr>
<td>Raw materials</td>
<td>Simple average</td>
<td>10.10 9.04 8.39 8.67 5.54 4.30</td>
<td>10.90 7.53</td>
<td>7.72 7.37 6.92 7.00</td>
</tr>
<tr>
<td></td>
<td>Weighted average</td>
<td>6.60 7.07 6.28 5.34 4.38 4.28</td>
<td>5.86 5.17</td>
<td>4.02 5.24 9.29 9.73</td>
</tr>
</tbody>
</table>

Source: UN Trains and WTO IDB.
The top 20 highest tariffs applied by Costa Rica are on agricultural products (with the exception of fish fillets and other fish meat). Some of the agricultural products with the highest tariffs are meat, dairy products, potatoes, onions and shallots, sugar and rice. These tariff headings, at the four-digit level (Table 5) represent 1.6% of products, which in turn account for 1.3% of total imports.

Source: UN Trains.
Table 5. Top 20 tariff rates applied by Costa Rica, 2014

<table>
<thead>
<tr>
<th>HS 4 digit products</th>
<th>Product name</th>
<th>Tariff</th>
<th>Share of total imports</th>
</tr>
</thead>
<tbody>
<tr>
<td>2105</td>
<td>Ice cream and other edible ice, whether or not con</td>
<td>65.00</td>
<td>0.016</td>
</tr>
<tr>
<td>0403</td>
<td>Buttermilk, curdled milk and cream, yogurt, kephir</td>
<td>65.00</td>
<td>0.004</td>
</tr>
<tr>
<td>0402</td>
<td>Milk and cream, concentrated or containing added s</td>
<td>58.47</td>
<td>0.063</td>
</tr>
<tr>
<td>0401</td>
<td>Milk and cream, not concentrated nor containing ad</td>
<td>57.25</td>
<td>0.022</td>
</tr>
<tr>
<td>0405</td>
<td>Butter and other fats and oils derived from milk;</td>
<td>55.00</td>
<td>0.003</td>
</tr>
<tr>
<td>0207</td>
<td>Meat and edible offal, of the poultry of heading 0</td>
<td>47.28</td>
<td>0.078</td>
</tr>
<tr>
<td>0203</td>
<td>Meat of swine, fresh, chilled or frozen.</td>
<td>45.00</td>
<td>0.082</td>
</tr>
<tr>
<td>1701</td>
<td>Cane or beet sugar and chemically pure sucrose, in</td>
<td>45.00</td>
<td>0.000</td>
</tr>
<tr>
<td>1601</td>
<td>Sausages and similar products, of meat, meat offal</td>
<td>41.50</td>
<td>0.017</td>
</tr>
<tr>
<td>0406</td>
<td>Cheese and curd.</td>
<td>40.40</td>
<td>0.086</td>
</tr>
<tr>
<td>1602</td>
<td>Other prepared or preserved meat, meat offal or bl</td>
<td>32.03</td>
<td>0.073</td>
</tr>
<tr>
<td>2004</td>
<td>Other vegetables prepared or preserved otherwise t</td>
<td>27.00</td>
<td>0.127</td>
</tr>
<tr>
<td>1006</td>
<td>Rice.</td>
<td>26.25</td>
<td>0.327</td>
</tr>
<tr>
<td>0703</td>
<td>Onions, shallots, garlic, leeks and other alliaceo</td>
<td>24.14</td>
<td>0.025</td>
</tr>
<tr>
<td>2402</td>
<td>Cigars, cheroots, cigarillos and cigarettes, of to</td>
<td>22.67</td>
<td>0.144</td>
</tr>
<tr>
<td>0701</td>
<td>Potatoes, fresh or chilled.</td>
<td>22.50</td>
<td>0.012</td>
</tr>
<tr>
<td>0210</td>
<td>Meat and edible meat offal, salted, in brine, drie</td>
<td>21.41</td>
<td>0.005</td>
</tr>
<tr>
<td>0710</td>
<td>Vegetables (uncooked or cooked by steaming or boil</td>
<td>17.88</td>
<td>0.009</td>
</tr>
<tr>
<td>2005</td>
<td>Other vegetables prepared or preserved otherwise t</td>
<td>16.60</td>
<td>0.103</td>
</tr>
<tr>
<td>0713</td>
<td>Dried leguminous vegetables, shelled, whether or n</td>
<td>15.09</td>
<td>0.194</td>
</tr>
<tr>
<td>0304</td>
<td>Fish fillets and other fish meat (whether or not m</td>
<td>14.76</td>
<td>0.143</td>
</tr>
</tbody>
</table>

Source: UN Trains.

1.2 Trade openness and structure

The ratio of total exports and imports to GDP is often used to measure a country’s effective openness to global trade in goods and, together with FDI indicators, the level of integration into the world economy. The ratio is, however, influenced by various endogenous factors, including size, structure of the economy, and variation in economic growth and hence can pick up a lot of macroeconomic factors. As Figure 7 illustrates, Costa Rica had a trade-to-GDP ratio of 46.91 % in 2014, a level similar to Germany and Korea, above Chile (36.36%) and Mexico (32.82%) and above the BRIICS’ average (28.25%) and the LAC average (27.50%). This high ratio is one of the most noteworthy characteristics of the deep transformation of the Costa Rican economy over the past three decades, based on an export oriented development strategy in which FDI has played a central role\(^66\). This strategy has integrated the Costa Rican economy into the world economy and changed its export profile from primary products to high-tech manufacturing and value-added services.

Figure 7. Trade ratios\(^{a,b}\) in BRIICS countries, selected OECD countries and Costa Rica, 2014

- **Figure Caption:**
  - a. Average of exports and imports of goods and services as a share of GDP constant 2005.
  - b. GDP (constant 2005 USD) logarithmic scale on the horizontal axis.
  - Source: OECD calculations based on WDI.

33. As noted in Costa Rica’s Investment Policy Review\(^67\), Intel’s establishment of a microchip test and assembly plant in 1997 was a major “breakthrough” for Costa Rica, as the country had until then mainly attracted FDI in the agro-industry and textiles and apparel sectors. Since then, Costa Rica moved into new sectors in the manufacturing industry, including medical devices and, to a lesser degree, aeronautics and automotive, while also becoming an important player in the services sector.

34. Over the past two decades, annual inflows of FDI to Costa Rica have shown an average annual growth rate of 13.1%, reaching their historical highest level in 2013 at 2 676.7 million USD.\(^68\) Costa Rica is the second largest recipient of FDI in Central America, closely after Panama. FDI inflows to Costa Rica have continuously represented around 25% of total inflows to Central America since the beginning of the 2000s. The United States has been the largest country of origin, accounting for 60% of total FDI inflows between 2000 and 2012, followed by Spain (6%), Canada (5%), Mexico (5%) and Colombia (3%). Costa Rica’s strategy regarding FDI “has contributed to increase and diversify exports, reshape the country’s productive structure and increase its participation in GVCs (particularly in the areas of electronics, medical devices, automotive, aerospace/aeronautics and film/broadcasting devices). As a result, about 37% of Costa Rica’s total exports are related to GVCs.”\(^69\)

35. FDI flows accounted for 5.4% of GDP in 2013\(^70\). In 2014 total FDI dropped by 19% to USD 2.2 billion, in line with the international trend - global FDI flows declined 8% in 2014 and 16% in Latin America. In Costa Rica, the four most affected sectors were real estate\(^71\) (down USD 399 million),

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68. Banco Central de Costa Rica (BCCR)
70. BCCR
public works concessions, telecommunications, energy and insurance (down USD 79 million), tourism (down USD 106 million), and trade (down USD 80 million). The losses were partly counteracted by free trade zone investments, which rose by 29% to USD 150 million in 2014, focusing in particular on high value-added sectors such as life sciences, advanced manufacturing and corporate and IT services, the country’s leading export industries. Rising electricity rates and high labor costs are among the challenges faced by the country in attracting potential investors. On the other hand, the elimination in June 2015 of tax breaks for foreign banks wouldn’t seem to affect significantly FDI flows, given that FDI firms did not use this type of financing to establish or expand operations in the country according to the Central Bank.

Figure 8. Foreign Direct Investment in Costa Rica by sector

Source: Costa Rican Central Bank.

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72 Article 59 of Law No. 7092.
In terms of trade balance, Costa Rica presents “opposite trends” regarding goods and services. Costa Rica has been running a deficit in terms of trade in goods for the past thirteen years. In the period between 2000 and 2013, the value of imports of goods increased at an annual pace of 8.84% whereas exports increased 5.84%. The trade balance deficit in goods increased from 3.4% of GDP in 2000, to 15.66% of GDP in 2012 and 13.41% in 2013. In contrast, Costa Rica has maintained an increasing surplus in terms of trade in services since 1990. In 2013, services accounted 41.8% of total exports (as compared to 26.1% in 2000).

Source: WDI.

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74 Ibid. and WDI.
75 IMF BOP and UN ComTrade.
Figure 10. Composition of the Costa Rican domestic production

Source: Costa Rican Central Bank.

Figure 11. Costa Rica's trend in foreign trade, 2007-2013

Source: UN ComTrade.

37. The United States is by far Costa Rica's largest trading partner, responsible for 47% of Costa Rica’s total trade, followed by the European Union (11%), China (6%) and Mexico (5%). Partners in the CACM (El Salvador, Guatemala, Honduras and Nicaragua) are responsible of 9% of its total trade. Costa Rica is running a trade deficit with the United States, China and Mexico and a trade surplus with the European Union.
Figure 12. Costa Rica’s top trading partners

In billion USD 2013

Source: UN ComTrade.

38. Foreign trade in goods and services (exports plus imports) accounted for 73.9% of GDP in 2013.\textsuperscript{76} Figure 13, shows the structure of Costa Rica’s exports and imports. Manufactured products dominate goods exports: capital goods (36%), industrial supplies (18%), consumer goods (11%), transport equipment and parts (2%). Food and beverages account for 33% of total exports. Imports into Costa Rica are composed as follows: capital goods (29%), industrial supplies (29%), consumer goods (13%), fuel and lubricants 13%, transport equipment and parts (8%), food and beverages (8%).

39. Costa Rica’s trade strategy has contributed to the diversification of its exports, by product and by trading partner. Regarding the latter, ECLAC indicates that between 2000 and 2012, the share of Costa Rica’s exports to the United States decreased from 53% to 38%; while the share of exports to Hong Kong,
China and to China increased from 0.3% to 4.7% and from 0.2% to 2.9% respectively; the share of exports to the CACM increased from 13% to 19%.\(^{77}\)

40. The Herfindahl-Hirschman concentration Index for Costa Rica (Figure 14) has fluctuated between 0.80 and 0.121 in the period between 1994 and 2013 (with a peak in 1999\(^{78}\)) and is above the OECD level. Since 2010, there has been a trend towards increased concentration due to an increase in exports under HS 85\(^{79}\) (its exports share has grown from 7.5% in 2000 to almost 27% in 2013).

**Figure 13.** Costa Rica’s foreign trade structure, 2013

Source: UN ComTrade.

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\(^{78}\) An important increase in the exports share of a product can provoke a significant increase of the HH concentration index. In this case, the peak was mainly led by the major increase of the share of nuclear reactors, boilers and machinery that represented almost 41% (as share of total exports) in 1999, compared to 11.8% in 1998 and 30% in 2000. OECD calculations based on UN ComTrade.

\(^{79}\) Electrical machinery and equipment and parts thereof; sound recorders and reproducers, television image and sound recorders and reproducers, and parts and accessories of such articles.
In the period between 1980 and 2014, Costa Rica’s services exports experienced an annual average growth rate of 11.1%. Costa Rica’s trade in services has maintained a surplus over the past 25 years, amounting to USD 6,922 million in 2014. Services represent 41% of total exports. In 2014, the leading export categories were travel, followed by manufacturing services on physical inputs owned by others, telecommunication, computer and information services and other business services. The rapid growth of the last two categories reflects the diversification of Costa Rica’s export basket towards a larger share of services that are intensive in skilled labour. On the import side, transport and travel were the leading categories.

Source: OECD calculations based on UN ComTrade Database.

80 OECD calculations based on IMF BOP.
Figure 15. Costa Rica’s service trade composition, 2014
In million USD

Note: Series are ordered by the value of exports in 2014.
Source: IMF Balance of payments.

42. Costa Rica has a highly articulated policy to promote its exports and to attract export-oriented FDI. The role and performance of the Ministry of Trade (COMEX), of PROCOMER (Promotora de Comercio exterior) and of CINDE (Coalición Costarricense de Iniciativas de Desarrollo), in this area has been highly praised by the Costa Rica’s private sector and by its trading partners. Moreover, PROCOMER, Costa Rica’s export promotion agency, has been recognised by the International Trade Center (ITC) as the “world’s best export promotion agency”. Its governing council is chaired by the Minister of Foreign Trade. PROCOMER’s work includes activities ranging from promotion, commercial intelligence, supply chains, export-processing zones, country-brand, to the design and implementation of a single window for foreign trade. CINDE is a private, not-for-profit entity, created in 1982\(^{81}\) that works on five main sectors: advanced manufacturing (electronics being the most mature sector); light manufacturing; life sciences (and medical devices); food industry; and corporate services. CINDE facilitates the establishment of a new company and maintains a relationship with the companies and monitors areas where competitiveness is helped or inhibited. Once a problem is identified, CINDE conveys the message to the competent authorities with a view to finding a solution\(^{82}\). Some of the challenges faced by investors are the cost, quality and availability of infrastructure (cost of logistics); red tape; lack of coordination; decisions by municipalities.

\(^{81}\) More than 250 companies have been attracted to Costa Rica by CINDE.

\(^{82}\) Some positive developments include: more efficient immigration procedures, transportation to the workplace, more targeted education programmes (there are 32 different programmes to meet the demands, for instance foreign language training), since in some companies work is conducted in languages other than Spanish). Special transportation is provided to the premises.
2. Policy framework for market openness: the efficient regulation principles

43. With reductions in so-called traditional trade barriers (e.g. tariffs) and expansion of global value chains, the complementarities between market openness and regulatory reform have become more apparent. When tariffs are removed entirely but significant regulatory barriers to business persist (e.g. it is difficult to obtain an importing license or start a business in a country), tariff reform in itself is unlikely to bring the intended economic effects. Unsurprisingly, some of the large on-going or recently concluded trade negotiations (e.g. Transatlantic Trade and Investment Partnership (TTIP) or the Trans-pacific Partnership (TPP)) focus on ways to align diverging regulatory requirements in participating economies to facilitate business exchanges. Regulatory reform is therefore an important element of pursuing market openness, while market openness can help facilitate domestic regulatory reforms.

44. As the balance between ensuring market openness and achieving intended public policy goals is sometimes difficult to strike in the most efficient way, building on their collective experience, OECD Members adopted a set of six principles considered critical for the development of efficient and trade-and-investment-friendly regulations (Box 2). In the following sections, we assess Costa Rica’s regulatory infrastructure against five of these principles to establish the level of alignment with the OECD best-practice. In addition, in the context of the Market Openness Review of Costa Rica it was decided to review the degree of respect for Intellectual Property Rights (IPR) and its compliance with international rules on trade and investment.

<table>
<thead>
<tr>
<th>Box 2. The OECD efficient regulation principles for market openness</th>
</tr>
</thead>
<tbody>
<tr>
<td>To ensure that regulations do not unduly constrain market openness, “efficient regulation” principles are built into domestic regulatory process and practices in OECD countries. OECD trade policy makers have identified six principles as key to successful market-oriented, trade and investment friendly regulations. They reflect the basic principles underpinning the multilateral trading system.</td>
</tr>
<tr>
<td>1) <strong>Transparency and openness of decision making</strong>: Foreign firms, individuals and investors seeking access to a market must have adequate information on new and revised regulations so that they can base their decisions on accurate assessment of potential costs, risks and market opportunities.</td>
</tr>
<tr>
<td>2) <strong>Non-discrimination</strong>: Non-discrimination means equality of competitive opportunities between like products and services irrespective of country of origin.</td>
</tr>
<tr>
<td>3) <strong>Avoidance of unnecessary trade restrictiveness</strong>: Governments should use regulations that are not more trade restrictive than necessary to fulfill legitimate objectives.</td>
</tr>
<tr>
<td>4) <strong>Use of internationally harmonised measures</strong>: Compliance with different standards and regulations for like products can burden firms engaged in international trade with significant costs. When appropriate and feasible, internationally harmonised measures should be used as the basis of domestic regulations.</td>
</tr>
<tr>
<td>5) <strong>Streamlining conformity assessment procedures</strong>: When internationally harmonised measures are not possible, necessary or desirable, recognising the equivalence of trading partners’ regulatory measures or the results of conformity assessment performed in other countries can reduce the negative effects of cross-country disparities in regulations and duplicative conformity assessment systems.</td>
</tr>
<tr>
<td>6) <strong>Application of competition principles from a market openness perspective</strong>: Market access can be reduced by regulatory action ignoring anti-competitive conduct or by failure to correct anti-competitive practices, particularly by incumbent firms which are normally also domestic.</td>
</tr>
</tbody>
</table>


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83 Regulation with respect to competition, covered in the sixth principle, is handled under the auspices of the Competition Committee.

2.1 Transparency

45. Availability of information on policies and regulatory environment in a country allows firms to better foresee the costs and returns of their activities and plan investments accordingly. Even when profound regulatory changes are taking place but market participants are informed in advance and adequate transition periods are provided, firms can minimise the costs of adjustment. Erratic and unpredictable decision-making and non-transparent standard-setting can lead to sub-optimal allocation of resources, rent-seeking, or a decision to abandon a market altogether. Transparency is therefore important to allow a smooth functioning of a market and ensure a level playing field among market actors.

46. The WTO defines transparency as “the degree to which trade policies and practices, and the process by which they are established, are open and predictable.” WTO membership contributes to increased transparency in a country’s trade-related policies insomuch as WTO rules include certain transparency obligations\(^\text{85}\), including notification requirements of technical regulations with implications for trade and the existence of a single contact point for so-called technical barriers to trade (TBT) in a WTO member state. In addition, the WTO Trade Policy Review allows for periodic monitoring of countries’ trade-related policies and regulations and the WTO Committees provide a forum for exchanges among members on particular policy issues, overall increasing the scrutiny of the country’s trade related policy framework.

47. Within the OECD context, the OECD Recommendation of the Council on Regulatory Policy and Governance define transparency as: 1) the ease of access to information on legislative acts and applicable regulations, 2) the adequacy of consultation mechanisms for market participants, including in the drafting stage 3) and effective appeal procedures. These apply to all regulatory acts, including technical regulations, as well as government procurement procedures. As Costa Rica’s legal regime has already been reviewed with respect to transparency by the OECD Investment Committee,\(^\text{86}\) this MOR builds on this work and highlights aspects of particular importance to trade. More information on transparency can be found in the country’s forthcoming OECD Public Governance Review (PGR).

48. Overall, businesses and trading partners acknowledge the efforts made by the Costa Rican government to achieve a high level of transparency, to publish draft laws and regulations in advance and to seek inputs from interested stakeholders. Costa Rican authorities are taking steps in the direction of improving transparency and access to information concerning draft regulations as well as to streamlining administrative requirements and procedures as part of a broader competitiveness agenda. In contrast to the above, the lack of transparency in the area of government procurement and imports of agricultural products has been raised by representatives of both Costa Rica’s private sector and academia as well as by some of its trading partners as a major concern. Views converge in affirming that the reality in the government procurement sector is distant from the standard that Costa Rica has reached in other public policy areas.

Access to regulation and information dissemination

49. The first aspect of transparency covered in the MOR is the ease of access to information: How does a government disseminate information about its legislative acts and, more broadly, regulatory objectives?

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\(^{85}\) For example, Article X of the General Agreement on Tariffs and Trade (GATT) 1994 requires that WTO members to publish trade-related laws, regulations, rulings and agreements prior to their entry into force; implement these legal acts in a uniform, impartial and reasonable manner; and provide a means for the review and correction of these acts. Additional transparency obligations are embedded in most WTO accords, including the General Agreement on Trade in Services (GATS), the Agreement on Trade-Related Intellectual Property Rights (TRIPS), the Agreement on the Application of Sanitary and Phytosanitary (SPS) Measures, the Technical Barriers to Trade (TBT) Agreement, and the Agreement on Government Procurement (GPA).

Is it relatively easy for interested individuals and firms to access the relevant information? These aspects tend to be particularly relevant for new market entrants or foreign firms, in particular of smaller size that may be unfamiliar with the local regulatory environment.

50. In Costa Rica, accountability, right to petition and access to public information are guaranteed, respectively by Articles 11, 27 and 30 of the Political Constitution. These constitutional principles are protected by the Constitutional Court\textsuperscript{87} and developed through various laws that allow citizens access to public information in the hands of the State, with the exception of documents or files containing State secrets.\textsuperscript{88} Nevertheless, in practice, the Constitutional Chamber has frequently found that public officials have limited citizens’ access to public information.\textsuperscript{89} In order to address this issue, the Organisation of American States (OAS) has recommended Costa Rica to institute legal rules and measures to support access to public information, and in particular, to integrate and systematise in a single regulatory text the provisions that guarantee this right, and to reinforce mechanisms and procedures.\textsuperscript{90}

51. In this context, the Office of the Ombudsman (Defensoría de los Habitantes) established in 2004 the Inter-institutional Transparency Network (Red Interinstitucional de Transparencia).\textsuperscript{91} The Network aims at ensuring access to public information, in particular in relation to the management of public funds, and includes institutions from the central and decentralised government as well as municipalities and civil society organisations.\textsuperscript{92} The participation in the Network signals the institution’s commitment to fight against corruption through the implementation of specific actions. The broad membership of the network sends a strong political message in support of Costa Rica’s nationwide objectives.

52. In 2012 Costa Rica joined the Open Government Partnership (OGP), in order to consolidate the efforts made in terms of transparency, access to information and fight against corruption. The OGP is an international initiative aimed at enhancing transparency, openness and accountability as well as to

\textsuperscript{87} Article 29 of Law 7135 on the Constitutional Jurisdiction (Ley de Jurisdicción Constitucional) allows for appeals (writs of amparo) against unreasoned provisions, agreements or resolutions, and in general, against any action, omission or simple material act by public officials and public bodies that has violated or would violate any fundamental right.

\textsuperscript{88} Law 7202 on the National System of Archives provides for free access to documents in the National Archives or the Archives of the Legislative, Judiciary and Executive Branches, as well as other public entities. The General Law (6227) on the Public Administration guarantees free access to all documents produced or held by institutions of the three government branches. Law (8220) on the Protection of Citizens against Excessive Administrative Requirements and Procedures imposes the obligation on public officials, entities or bodies to provide citizens with information on administrative requirements and procedures. Law 9097, regulating the Right of Petition (Ley de Regulación del Derecho de Petición) provides for all citizens (foreign or national) the right of petition before any public institution, administration, or authority, on any subject matter or information on public matters.

\textsuperscript{89} Costa Rica Final Report. Mechanism for follow-up on implementation of the Inter American Convention against Corruption. SG/MESICI/doc. 118/04 rev.4. 30 July 2004. The report notes that in practice, “public officials tend to limit access for their own reasons... and that there have been many cases decided by the Constitutional Chamber in which it has been found that public officials have limited access to information”.


\textsuperscript{91} http://www.dhr.go.cr/transparencia/acerca_de_la_red/presentacion/jose_echandi.html

\textsuperscript{92} Some of the agencies participating in the Network are, from the central government: Contraloría of the Republic, Elections Tribunal, Ministry of Finance, Ministry of Planning, Ministry of Foreign Affairs, Ministry of Economy, Industry and Commerce; the Judiciary Branch; from the decentralised government: RECOPE, SENASA, ARESEP, CNFL, IFAM, CONARE. From the municipalities, San Jose, Escazu, Grecia, Alajuelita; from other organisations: CONARROZ.
facilitating citizens’ participation, through the use of information and communication technologies (ICTs).\(^3\) As part of its commitments under the OGP, Costa Rica has further tried to enhance transparency and accountability through the development of the Open Data website (Portal de Datos Abiertos)\(^4\) and is in the process of finalising the creation of the National Commission on Open Government (Comisión Nacional de Gobierno Abierto).

53. In 2014, a bill of law proposed the creation of a Costa Rican Institute on Access to Information (Instituto Costarricense de Acceso a la Información),\(^5\) following the practice of other countries in the region,\(^6\) with a view to consolidating in a single institution the right to access to information developed through the jurisprudence of the Constitutional Court, and to guaranteeing effective access to information by making it available “before it is requested”. On the same occasion, the administration also proposed the creation of an entity to coordinate the use of information technologies and the handling of information by government entities.\(^7\) Currently, these initiatives are still under analysis by a Special Legislative Commission (see Box 3 below) and do not seem to garner enough support, partly because, besides the creation of new institutions, they propose actions that are currently implemented by virtue of the initiatives discussed above.

Access to information

54. Publication of laws, decrees and administrative acts of general application in the Official Journal (Gaceta Oficial), is a mandatory requirement\(^8\) for their entry into force. Such entry into force is usually immediate upon publication, except when otherwise provided, or six months after publication in the case of technical regulations. The Official Journal allows free and easy access to information through a well-developed website; through a note in its main cover page, it reminds the general public about its constitutional right of access to public information pertaining to the functioning of public institutions, the exercise of public office and the use of public funds.\(^9\)

55. Besides the Official Journal, a wealth of information is available through electronic platforms, also accessible by the general public. These platforms range from very specific topics (such as the REGLATEC website, described below in the technical regulations sub-section) to a broader body of legal norms. By way of example, the National Catalogue of Formalities (Catalogo Nacional de Tramites, CNT)\(^10\) created in 2012, is a central register compiling standardised basic information on all administrative procedures and requirements imposed on citizens.\(^11\) The CNT aims at increasing legal certainty and citizen control over

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\(^3\) [www.opengovpartnership.org](http://www.opengovpartnership.org)

\(^4\) [http://datosabiertos.gob.go.cr/home/](http://datosabiertos.gob.go.cr/home/)


\(^6\) For instance, Chile, El Salvador, Mexico and Uruguay.


\(^8\) Articles 121, 140 and 240 of Law 6227 of the General Public Administration.

\(^9\) [https://www.imprentanacional.go.cr/gaceta/#ui-accordion-ct00_MainContentPlaceHolder_ContentGacetaDiv-header-1](https://www.imprentanacional.go.cr/gaceta/#ui-accordion-ct00_MainContentPlaceHolder_ContentGacetaDiv-header-1)

\(^10\) [http://www.tramites.go.cr/](http://www.tramites.go.cr/)

administrative procedures. Currently, it contains information on 2045 procedures of 61 entities.  

56. E-Regulations Costa Rica\textsuperscript{103} is an online platform that provides users with information on some administrative requirements and procedures, with a particular focus on doing business (e.g. setting-up a company, paying taxes, registering in the social security system, doing exports and imports). The site, implemented by the E-Government Secretariat (Secretaría de Gobierno Digital)\textsuperscript{104}, with the assistance of the United Nations Conference on Trade and Development (UNCTAD), identifies the requirements, time frames, costs and responsible entities in charge of each procedures and explains them to users in a step-by-step manner. e-Regulations also offers access to online legislation. Since there is no match between the database of CNT and e-Regulations, there is some duplication of information, which could be overcome by exploring avenues for coordination, drawing on the respective advantages and features of both platforms.

57. A particular mention should be made of the Sistema Nacional de Legislacion Vigente (SINALEVI).\textsuperscript{105} SINALEVI is a single repository of all the legislation enacted since 1821 as well as of Opinions (Pronunciamientos) by the Attorney General of the Republic (Procurador General de la Republica). Daily updates of SINALEVI make it the most reliable source of information on the current Costa Rican legal system. Resources allowing, a revamping of SINALEVI (to overcome some minor technical difficulties mainly in terms of its download speed), would help it remain an extremely relevant information and transparency tool regarding Costa Rica’s legal framework.

58. The websites of other public institutions add to the list of sources of information discussed above as they provide a significant amount of relevant information about the institution’s activities, administrative procedures and requirements, in some cases with a section in English. A contact point for general matters as well as for providing access to the Office of the Comptroller of Services (Contraloria de Servicios)\textsuperscript{106} of each institution is also available. In addition, the publication of each institution’s Annual Plan for Regulatory Improvement and Administrative Simplification (see Section 2.3), provides stakeholders an advance overview of the administration’s plans to improve the quality and efficiency of its services over the coming year. In general, websites are always accessible and information is displayed in a user-friendly manner. However, they are not equally well-developed in terms of design and download speed and in some cases links to other government websites are not operational.

59. The two main trade and investment information websites are the website of the Ministry of Foreign Trade (Ministerio de Comercio Exterior, COMEX)\textsuperscript{107} and the website of the Promotora de Comercio

\textsuperscript{102} The information on each procedure refers to: requirements, time frames, legal basis, opening hours, and contact information, among others.

\textsuperscript{103} \url{http://costarica.eregulations.org/}

\textsuperscript{104} \url{http://www.gobiernofacil.go.cr/e-gob/gobiernodigital/index.html}

\textsuperscript{105} \url{http://www.pgrweb.go.cr/scij/avanzada_pgr.aspx}. SINALEVI is part of the Costa Rican Legal Information System (Sistema Costarricense de Informacion Juridica SCIJ). SCIJ is part of a project conducted between the IDB and Costa Rica aimed at modernising the administration of justice. Besides SINALEVI, it contains the legislation in force in Costa Rica the Jurisprudence from Tribunals and from Chambers of the Supreme Court of Justice; and the Administrative Jurisprudence of PGR and of the Ministry of Finance.

\textsuperscript{106} The Contralorias de Servicios were established in 2013, by virtue of Law 9158 to regulate the National System of Offices of the Comptroller of Services (Ley Reguladora del Sistema Nacional de Contralorias de Servicios). They aim at improving the quality of services provided by public institutions.

\textsuperscript{107} \url{www.comex.go.cr}. 
Exterior (Procomer), Costa Rica’s export promotion agency. The former includes relevant information on export and import procedures, as well as information on WTO, OECD and other key legal texts (including all FTAs and BITs in force). The latter provides information on Procomer’s services, including the Single Window for Foreign Trade (Ventanilla Unica de Comercio Exterior, VUCE, see Section 2.3). Combined, these two websites provide market participants with a very comprehensive view of Costa Rica’s trade and investment environment. The specific transparency measures related to tariff-setting and customs procedures are reviewed in the trade facilitation subsection, under 2.3 below.

Publication in advance

Advance publication of draft laws follows the Rules of the Costa Rican Congress (Reglamento de la Asamblea Nacional de Costa Rica) (Box 3). Drafts laws are published in the Official Journal as well as on Congress’ website. Any person, national or foreigner can have access to the files containing the draft laws (as well as motions for amendments, views expressed by interested parties, records of proceedings). In case a draft law undergoes significant modifications, the amended text must be published and interested parties must be consulted again.

Box 3. Procedure for the approval of a Bill of Law

Rules of Congress (Reglamento de la Asamblea Legislativa)

- Submission of the bill of law to the Secretariat of Congress for publication in the Official Gazette.
- Review by the Department of Reference Studies and Technical Services to identify potential links or duplications with existing laws, among other issues.
- Analysis and discussion by one of the Legislative Commissions in Congress.
- Mandatory consultations with the Elections Tribunal, the University of Costa Rica, the Judiciary Branch or autonomous institutions on bills of law related to those institutions.
- Non-mandatory consultations (in public sessions) with all entities directly related to the bill of law.
- Transmission to the Plenary and discussion by the 57 Members of Congress, until approval in first reading.
- Mandatory consultations with the Constitutional Court if the bill of law pertains to constitutional reforms, reforms to the Constitutional Jurisdiction Act or to the approval of international conventions or treaties, or on an any other bill of law if they are requested by a minimum of 10 Members of Congress.
- Submission to the Constitutional Issues Commission to address the unconstitutional aspect in cases where a violation to a constitutional right is determined.
- Discussion in second reading, approval and enactment for publication in the Official Journal.

Source: Authors with information submitted by COMEX.

In contrast with the extensive transparency in the process of preparation of draft laws, draft regulations (Executive Decrees) are not systematically published and consultations are not mandatory. Each institution handles the publication of their respective draft regulations, usually in the Official Journal as well as on the institution’s website and decides on the consultations process. A systematisation of the process across government could promote the transparency and accountability of regulatory decision making.

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108 http://www.procomer.com
109 Statistics, news and events, special regimes, logistics, among many others.
110 Rules of Congress (Reglamento de la Asamblea Legislativa). Part III, Title I.
111 http://www.asamblea.go.cr
Overall assessment

62. Overall, the variety of information sources available in Costa Rica provides easy access to regulation and contributes to broad information dissemination. Despite the fact that draft regulations are not systematically published, no particular concerns were raised in that regard by the private sector, as they acknowledge being informed and consulted in general. Nevertheless, the systematisation of procedures for the publication of draft regulations could contribute to a more predictable regulatory environment.

Consultation Mechanisms

63. A second fundamental aspect of transparency refers to equal opportunities for all stakeholders to participate in formal or informal consultations on regulatory acts, including during the drafting stage. Systematic consultations, and an equal access to them, are desirable in any case in a democratic system, but they also have important effects on the quality and enforceability of regulations as they allow market participants to voice their concerns and opinions during the regulations formulation process.

64. Article 27 of the Political Constitution provides that every person has the right to present petitions, individually or collectively, before any public official or public entity and to obtain a prompt reply to such petition. As noted above, the right to petition, due to its status as a fundamental right, is also protected under the writ of *amparo*. As discussed above (paragraph 6), the General Law on the Public Administration guarantees free access to all documents produced or held by institutions of the three government branches. In the case of draft legislation, consultations are organised by the Legislative Commissions through hearings with the public and private sectors. The private sector is generally represented in these hearings by chambers, associations and other organisations. Lawmakers convene the stakeholders they believe may be affected by a particular bill of law. Without prejudice to the above, groups or individuals that have not been convened may still provide lawmakers their views in writing or through an oral hearing. Despite the fact that these consultations are not mandated by law but are rather a practice developed in Congress, they are systematically conducted and no concerns seem to have been raised in this regard to date.

65. In the case of draft regulations, consultations are not mandatory. Each regulatory entity decides on a case-by-case basis about the method and the scope of consultation. Sometimes input is sought from selected stakeholders that may be affected by a particular regulation or have shown interest in the past, for a period of ten working days (except in cases of public interest or emergency). In other cases, based on the nature of the regulations, the issuing Ministry may decide to conduct consultations with a broader public for a period to be set on a case-by-case basis. Consultations are usually made through the publication of the draft regulation in the Official Journal as well as on the issuing entity’s web sites. Some government agencies conduct round tables with interested parties to explain the purpose of proposed reforms. For instance, in the telecommunications sector, extensive consultations were conducted for the elaboration of the National Plan for the Attribution of Radio Frequencies (Plan Nacional de Radiofrecuencias).

66. In an effort to increase regulatory transparency and support the administration’s simplification endeavors, an upcoming reform of the Anti-formalities regulation (see Section 2.3) seeks to establish online links between public consultations and the existing cost-benefits analysis mechanisms. This system will allow for early stakeholder participation as it will be possible for interested parties to access the results of the cost-benefit analysis of draft regulations and to submit comments and observations as part of the

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112 Article 29 of Law 7135 on the Constitutional Jurisdiction.
114 Article 361 of Law 6227 on the Public Administration (Ley General de la Administracion Publica).
comments made to the draft proposal. In practical terms, this would allow constituencies to form a better informed view of the proposed regulations and lead to a more transparent regulatory process. This reform is expected to be fully operational by the end of 2015.

67. Despite the fact that consultations on draft regulation are not mandatory, private sector representatives are generally consulted by the issuing institutions. Nevertheless, some of them are of the view that the ten-day period for comments is insufficient. Due to this fact, interested parties very frequently have to request for ten additional days (which is generally granted by the authorities). The private sector considers that a legal reform providing for a longer period of time for comments (as opposed to a case-by-case request for extensions) might be a more efficient way to deal with this issue. The authorities, however, do not share this view.

68. Overall, business representatives confirm having various opportunities to raise their views on proposed laws and regulations. Furthermore, whenever a query or a comment is sent to a government entity, a motivated response is generally provided. In particular, representatives from Costa Rica’s private sector and of its main trading partners praised the role played by COMEX in handling consultations and requests for information. This role will be further discussed in Section 2.3. Nevertheless, the discretionary power left to public entities in the process of elaboration of draft regulations requires further attention and action. In this regard, a more systematised consultation process, providing for a clear set of rules on advance publication and consultation periods would match the coherence that Costa Rica strives for in the broader regulatory framework. The proposed reforms introducing an online system for RIA’s of draft regulations are certainly a step in the right direction.

Appeal Procedures

69. As part of the principle of due process, Costa Rican legislation provides for the right of recourse against administrative acts. In general, there are two forms of recourse available: first, an administrative recourse (revocatoria) directly to the entity having issued the regulation or administrative act and, second, an appeal to a superior and independent level. In some cases, appeals can be filed to a third level (casación) before the Chambers of the Supreme Court of Justice.\(^{115}\) Appeal procedures are available to national and foreigners alike\(^ {116}\). By way of example, in the case of customs procedures\(^ {117}\), the General Law on Customs (Ley General de Aduanas),\(^ {118}\) provides for the right to appeal a final act issued by Customs authorities through reconsideracion or through appeal before the National Customs Tribunal (Tribunal Nacional de Aduanas TNA). A recourse must be filed within 15 working days following the notification of the final act.\(^ {119}\) Similar recourses are available against an act issued directly by the General Directorate-General of Customs (Direccion General de Aduanas DGA).\(^ {120}\)

70. Moreover, as discussed above, a writ of amparo can be lodged before the Constitutional Chamber (Sala Constitucional) against “unreasoned provisions, agreements or resolutions, and in general, against any action, omission or simple material act by public officials and public bodies that has violated or threatens violation to any fundamental right”. An action of unconstitutionality (accion de inconstitucionalidad) can also be introduced against laws and general provisions that infringe any law or

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\(^{115}\) Article 134 to 153 of the Code of Administrative Litigation (Código Procesal Contencioso-Administrativo)

\(^{116}\) See for instance Art.10 of the Code of Administrative Litigation

\(^{117}\) Customs valuation, rules of origin, tariff classification, penalties (fines and suspension), among others.

\(^{118}\) Articles 198 to 205 of Law 7557.

\(^{119}\) Article 198 of Law 7557.

\(^{120}\) Articles 204 of Law 7557.
constitutional principle, or when the elaboration of laws or legislative agreements violates any requirements or essential procedure specified in the Constitution or established by the Rules of Congress. Admittance of a writ of amparo or of acción de inconstitucionalidad immediately suspends the effects of the act or norm that is being questioned.

71. While acknowledging the fundamental importance of the right of appeal above as part of due process in the Costa Rican legal system, representatives from Costa Rica’s business sector and academia, as well as of its main trading partners, share concerns regarding the use of appeals to block projects, including infrastructure projects at the national level. They also point to the fact that in many cases, appeals are lodged without justification and are therefore dismissed by the Constitutional Chamber and other tribunals with no sanction to the appellant. The upcoming OECD Public Governance Review of Costa Rica notes that “nowadays, the Constitutional Chamber solves over 17,000 cases each year, most of which concern the right to petition. Approximately half of these cases are not heard because they are declared to be “matters of mere legality” (asuntos de mera legalidad) by the Chamber.” The discussion about the role played by the Constitutional Chamber in a broader public policy context is developed in that Review.

Technical regulations

72. Technical regulations and standards can vary significantly by country. While divergence in itself is costly for firms seeking to trade internationally, transparency reduces uncertainty over applicable requirements and thereby facilitates access to markets. Best practice in transparent regulatory regimes entails not only access to information, but transparency in the standards-setting process. In the area of standards development, a process that is open to all stakeholders, including foreign ones, can encourage adoption of standards that are more efficient as they benefit from consideration of a greater pool of interests and experiences, and potentially reflect more closely international standards.

73. The legislation on standards and technical regulations in Costa Rica is composed of national and Central American laws, including the Law on National Quality System (SNC), Decrees on the Technical Regulations Body and on the Elaboration of Technical Regulations and the Central American Regulation on Standardization, Metrology and Authorization Procedures (see below, Section 2.4). All these regulations incorporate specific provisions to ensure the elaboration of technical regulations and standards in a transparent and accountable way. In particular, Decree 36214 contains a detailed set of guidelines to be followed, among others, in the consultations with the private sector as well as with a broader group of stakeholders.

74. Information on standards and technical regulations and their preparation is made available to all interested persons on the website of the Ministry of Economy, Industry and Commerce (MEIC). The website hosts the Sistema de Reglamentación Tecnica (REGLATEC), which contains information on technical standards in force at the domestic, regional (Central American) and international level. REGLATEC also offers a procedural guide for the elaboration of technical regulations, as well as information on draft technical regulations and their public consultation process.

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121 Public Governance Review of Costa Rica
122 Law 8279 on the National Quality System, (Sistema Nacional para la Calidad, SNC).
123 Decrees 32068 and 36214.
124 Resolution 37-99
125 http://www.reglatec.go.cr/reglatec
126 Reglatec is housed in MEIC. http://meic.go.cr/reglatec
75. In addition, an Automatic Notification System\textsuperscript{127} sends users information on the draft technical regulations in areas of their interest, notified by Costa Rica’s main trading partners. The system allows for the submission of comments. Users can also subscribe to an alert mechanism that helps them keep track of the deadlines for comments. Finally, CODEX Digital System\textsuperscript{128} is aimed at supporting national coordination in the development of international standards for food under the Codex Alimentarius. It functions in a similar way as the Automatic Notification System.

76. Likewise, in the context of the Central American technical regulations, members agreed on a set of principles to guide the elaboration of technical regulations (for instance, in terms of a clear and precise drafting of the scope of application), on deliberations in the context of technical working groups and national committees, as well as on consultations with interested parties. Accordingly, COMIECO Decision 162-2006\textsuperscript{129} sets the obligation to consult with affected parties.

77. The respect of these transparency and accountability provisions are supervised by the Technical Regulations Body (Órgano de Reglamentación Técnica ORT),\textsuperscript{130} an inter-ministerial commission coordinating technical regulations development (see Section 2.4). In the framework of its coordination role, ORT has the responsibility to ensure a transparent process in the elaboration of technical regulations with the participation of all interested sectors.\textsuperscript{131}

78. The same transparency provisions are applied to the process of adoption of the National Plan for Technical Regulations (PNRT), which Costa Rica elaborates every four years on the basis of extensive consultations with concerned regulatory bodies and the private sector in order to identify priority areas for new regulations, at the domestic and international level. The participatory nature of the process that leads to the elaboration of the upcoming PNRT (2015-2018) as well as the diversity of interests of parties involved seem however to have generated delays in the implementation of the current PNRT (2011-2014), causing some concerns to the private sector.

79. Costa Rica has regularly notified its draft technical regulations to the WTO. These notifications are made by COMEX following the national public consultation, and a comment period of sixty days is granted to Members, in conformity with WTO recommendations.\textsuperscript{132} ORT’s Information Centre on Technical Barriers to Trade (Centro de Informacion sobre Obstaculos Tecnicos al Comercio, CIOTC), which acts as Costa Rica’s TBT national enquiry point,\textsuperscript{133} receives and handles the questions and comments made by WTO Members. CIOTC ensures that a substantiated answer is provided to every received comment and there have been cases where modifications have been introduced to draft technical regulations based on comments made by WTO Members.\textsuperscript{134} Costa Rica notified 118 technical regulations to the WTO between January 2007 and March 2015.\textsuperscript{135} At March 2015, there were, in addition, 62 Central

\textsuperscript{127} \url{http://www.meic.go.cr/notificaciones}
\textsuperscript{128} \url{http://www.tramites.go.cr/CodexAlimentarius/login.aspx}
\textsuperscript{129} Article 6 of the Decision.
\textsuperscript{130} Article 39 of Executive Decree 36214. The Technical Secretariat of ORT is the Directorate for Regulatory Improvement and Technical Regulation (Direccion de Mejora Regulatoria y Reglamentacion Tecnica, DMRRT) of MEIC.
\textsuperscript{131} Articles 39, 40 and 41 of Executive Decree 36214.
\textsuperscript{132} Except in emergency situations that have to be justified.
\textsuperscript{133} crotc@meic.go.cr.
\textsuperscript{134} These cases pertain to the draft Central American Technical Regulations of Textile Labelling, as well as to other product labelling regulations; and to the draft Central American Regulation of Microbiological Criteria.
American technical regulations in force. Costa Rica’s SPS National Enquiry Point is the State Phytosanitary Service (Servicio Fitosanitario del Estado, SFE), in charge of the sanitary protection of all products of plant origin, biotechnology organisms and products for agricultural use (see below section 2.4).  

80. Overall, no particular concerns have been raised by businesses or by trading partners regarding the transparency of the elaboration of Costa Rican technical regulations, other than some concerns regarding the implementation of the current PNRT. Reforms currently under consideration concerning the rules for the submission of a proposed technical regulation could make a positive contribution towards consensus-building in this area.

**Government Procurement**

81. Government procurement accounts for a substantial share of GDP in most countries (roughly 15-20%). Consequently, the ability of foreign suppliers to participate in government procurement transactions constitutes an important dimension of market openness. Transparency in government procurement procedures and practices is an essential condition for promoting broad access to government procurement for both domestic and foreign suppliers. There can be substantial economic benefits from such transparency and openness, including increased competition and diversity of supply, reduced opportunities for corruption, and resulting government budgetary savings, among other positive effects.

82. In the case of Costa Rica, in the period between 2010 and 2013, public procurement of goods and services accounted for 15% of GDP with an average nominal growth rate of 7%. In 2013, only 6% of the expenditure in government procurement was made by the central government (ministries and dependent government authorities).137 The remaining 92% was made by decentralised functional institutions and about 2% by municipalities and other non-state entities.138 The main procuring agencies are from the decentralised functional sector, in particular the Costa Rican Electricity Institute139, the National Road Council, the Costa Rican Social Security Fund,140 the Costa Rican Oil Refinery141 and the National Bank of Costa Rica.

83. The general framework for public procurement in Costa Rica is set by the Law on Public Procurement142 and its regulations143 and by the Law for Financial Management and Public Budgets.144 The Public Procurement Law regulates the procurement activity of entities of the central government, decentralised sector, public enterprises, non-state public entities and municipalities. Non-state public entities with financing from private resources exceeding 50% of their total revenues and public enterprises with more than 50% of their social capital held by private individuals are excluded by virtue of the

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137 Report DFOE-SAF-IF-16-2014. 16 January 2015, Contraloría General de la Republica. Informe de la auditoria de carácter especial sobre el proceso de transición al sistema unificado electrónico de compras públicas.
139 Instituto Costarricense de Electricidad (ICE).
140 Caja Costarricense de Seguridad Social (CCSS).
141 Refinadora Costarricense de Petroleo (RECOPE)
142 Law 7494 of 1995 (Ley de Contratación Administrativa).
143 Executive Decree No. 33411.
144 Law 8131 of 2001 (Ley de la Administración Financiera y Presupuestos Públicos).
implementing decree. On the other hand, any contractual activity of private entities in which public resources are totally or partially used shall follow the procurement principles provided for in the Regulations, including efficiency; equal treatment of all potential bidders and free competition; transparency of procurement procedures and good faith, even if they can apply different procedures, bidding timelines and modalities for challenges.

84. The Ministry of Finance, through the Department of Property Management and Public Procurement (Dirección General de Administración de Bienes y Contratación Administrativa, DGABCA), is the supervisory body for government procurement by the central government, which represents 61 entities of the 368 existing in Costa Rica (6% of public procurement in 2013). In this capacity, DGABCA conducts periodical documentary reviews among central government institutions concerning the amount of procurement as well as the type of procedures followed for adjudication. These reviews are based on sampling methods and therefore are not conducted in the totality of the institutions.

85. There is no similar supervisory body for government procurement from the decentralised sector or municipalities. Nevertheless, the Office of the Comptroller General of the Republic (Contraloría General de la Republica, CGR)\(^{145}\), as the oversight authority for public finance and spending, issues general guidelines for all public entities regarding government procurement; it also hears complaints and appeals, depending on the amount of the procurement and the budget of the contracting agency.\(^{146}\) By virtue of Article 184 of the Political Constitution, Contraloría carries out an *ex-ante* control through the approval of the budgets of municipalities and decentralised institutions. Its control extends to two thirds of the public expenditure. Contraloría also issues a Refrendo, which is a preventive, *ex-ante* verification of the legality of certain administrative acts, exclusively focused on legal compliance vis-à-vis the whole spectrum of the national applicable legal framework. In addition, Contraloría carries out an *ex-post* control as it reviews how entities spent public funds and determines if they complied with the law.

86. The general framework provides for three types of government procurement procedures, *public or open* tendering, *selective* tendering and *limited* tendering.\(^{147}\) Open tendering is applied to high-value public contracts, concessions of public works, and purchase of property, among others, and calls for a tendering notice to be published in the Official Journal. Selective tendering applies to lower value procurement and provides for shorter timeframes. At least five companies are invited to participate from the register of suppliers, according to pre-defined criteria.\(^{148}\) Finally, limited tendering applies to small contracts or contracts where there is only one possible bidder because of the nature of the good or service (training contracts with foreign suppliers; lease or purchase of unique goods, among others). Upon authorization from Contraloría (see discussion below), entities may conduct a direct bidding or a special procedure instead of following the ordinary bidding procedure.

87. The type of tender is defined by the value of the procurement, with more complex and higher value procurement subject to more stringent rules and guarantees. The value of the procurement also determines the authority dealing with eventual objections or appeals (i.e. either the corresponding purchasing entity or the Contraloría). Value thresholds are updated by the Contraloría for each public institution on a yearly basis.

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\(^{145}\) Article 2 bis of Law 7494 on Government Procurement.

\(^{146}\) A detailed discussion on the role of Contraloría is contained in the forthcoming Public Governance Review of Costa Rica.

\(^{147}\) Articles 91, 97, 127 and 136 of Decree 33411.

\(^{148}\) Article 44 of Law 7494 on Government Procurement.
basis, based on the last three-year average of each institution’s budgetary lines for procurement of goods and services. Thresholds for the year 2015 have been published on the Official Journal on 27 February.

88. There is a pronounced tendency to award procurement contracts through limited tendering, as compared to other type of procedures (Figure 16), raising the question whether it reflects an attempt by procurement officials to avoid more complex, requirements and formalities. A more detailed analysis will be included in the forthcoming Public Governance Review of Costa Rica.

**Figure 16. Millions of colones adjudicated between 2012 and 2014 by type of procedure**

![Bar chart showing millions of colones adjudicated between 2012 and 2014 by type of procedure.]

*Note: Series ordered by the value in 2014. Values indicated on the chart represent 2014.*

*Source: Contraloría General de la República.*

89. The common problem of agencies fractioning procurement in order to reach lower thresholds and shorter tendering procedures is also present in Costa Rica, where it seems that agencies resort to this practice in order to meet deadlines set for government expenditure (for instance, the obligation on the entity to have spent 50% of the budget at the end of the first half of each year). Since solutions for properly meeting deadlines are available in the legislation (including the possibility to initiate procurement procedures without the corresponding budget or, in the case of municipalities, to spend the budget within the first six months of the following year under certain conditions), training on appropriate management practices and procurement planning could provide an alternative to deter this practice. Moreover, it has

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149 Articles 27 and 84 of Law 7494 on Government Procurement.

been suggested that a more permanent solution to this problem could come from multi-year planning of the government budget, as it would allow for the elaboration and implementation of medium-term strategies. Such planning, which would have to overcome the limitation of the 4-year presidential term, is currently under analysis by the government.

90. A number of activities are excluded from the general framework for public procurement and subject to special procurement regimes instead. Some of these activities include exploration and exploitation of hydrocarbons\(^\text{151}\) as well as the acquisition of medicines by the CCSS.\(^\text{152}\) Others concern public utilities operating in an open market in competition with private operators. For instance, since the opening up of the telecommunications and the insurance sectors, ICE, the incumbent telecommunications operator, and INS have a special procurement regime. ICE is allowed to use ordinary public and limited procurement procedures but with higher value thresholds than other public entities. It is also allowed to resort to a number of exceptions to the ordinary bidding procedures, additional to those provided for in the Law on Government Procurement. The activity of ICE’s subsidiary companies (Radiográfica Costarricense S.A. RACSA and CNFL), which are private entities organised as corporations, is regulated by private law.\(^\text{153}\) The procurement of goods and services of these enterprises is subject to autonomous regulations approved by ICE. Similarly, changes were made to the INS procurement system, to allow INS not to follow the ordinary procedures in the procurement of certain goods and services required for its operation, with a view to expediting its procedures.\(^\text{154}\)

91. Finally, in some specific cases,\(^\text{155}\) procurement of goods and services is conducted through framework agreements (Convenios marco) by entities that share a supplier or a procurement system. There is a public tendering process in order to award a framework agreement, and the awarded agreements are extended every year for a maximum period of 4 years. Under these agreements, tendering procedures are shorter, since the procurement has already been awarded and entities can buy any good or service covered by the framework agreement without delay. Currently, 12 Convenios marco are in force concerning the supply of services such as catering, cleaning, waste management, airplane tickets or the provision of goods such as police cars, construction material, office and school equipment, gloves.

92. The coexistence of the various regimes described above results in a serious problem of fragmentation of the public procurement system. Other factors identified as contributing to this fragmentation are the lack of standardised documents and procurement processes and uniform product codes; the multiplicity of internal regulations and procedures regarding procurement; and the duplication of administrative procedures for the registration of suppliers.\(^\text{156}\) For instance, in some cases suppliers would be able to self-register online, whereas in others, they would have to physically go to the relevant Ministry to comply with registration procedures. Product codes would be linked, in some cases, to a product use (as

\(^{151}\) Law 7399 on hydrocarbons.

\(^{152}\) Law 6914 establishing the Costa Rican Social Security Fund.

\(^{153}\) Law No. 8660 on the Strengthening and Modernisation of Public Entities of the Telecommunications Sector (Fortalecimiento y Modernización de las Entidades Públicas del Sector Telecomunicaciones) and its Regulations (Executive Decree No. 35148).

\(^{154}\) Law 8653 to Regulate the Insurance Market (Ley Reguladora del Mercado de Seguros) and the Internal Regulations on Procurement Excluded from Ordinary Procedures (Reglamento de contrataciones exceptuadas de los procedimientos ordinarios de contratación administrativa de conformidad con el artículo 9 de la Ley del Instituto Nacional de Seguros).

\(^{155}\) Article 115 of Decree 33411.

opposed to the United Nations Standard Product Code), which means that for new uses of the same product suppliers would have to do a new registration. In some instances, suppliers would be requested to submit documents partly electronically and partly physically. Furthermore, there are specific provisions containing preferences in the conduct of procedures (discussed in Section 2.2) that result in an increased difficulty to navigate through the government procurement system.

93. The problem of fragmentation is further compounded by the existence of 19 different government procurement digital platforms which are not interconnected.\footnote{Some of these platforms are the following: Mer-Link, Compra-Red, Génesis, SICA, SIPA, SIREMA, Wizdom, SIAM, SIACO, SAP, RECOPE, AVATAR.} The two main platforms were Compra-Red for procurement procedures in the central government and Mer-Link, used by 14 public buyers (including ICE, other independent public bodies, universities, the national bank and some municipalities) and representing a much larger volume of procurement, as indicated earlier.\footnote{Detailed information on the evaluation of Compra-Red and Mer-Link would be available in the forthcoming Costa Rica’s PGR.} Other institutions, such as the CCSS, the Costa Rican Oil Refinery RECOPE, the INS, have developed their own procurement platforms.

94. Costa Rica has made several attempts to address the problems posed by the multiplicity of procurement regimes and digital platforms. Given the slow progress in this front, Contraloría recently conducted an audit,\footnote{Report DFOE-SAF-IF-16-2014. 16 January 2015, Contraloría General de la Republica. Informe de la auditoria de carácter especial sobre el proceso de transición al sistema unificado electrónico de compras públicas.} urging the Ministry of Finance to strengthen its lead in the area of government procurement and to implement an up-to-date registry of sanctions and prohibitions.\footnote{The Audit also called for the implementation of the Sistema Unificado Electrónico de Compras Públicas (SUECP), which had been introduced by Executive Decree 37943, aiming to provide a unified procurement regime. This system has now been superseded by the recently adopted SICOP.}

95. In January 2015, the government finally abandoned Compra-Red and adopted an Integrated System of Government Procurement (Sistema Integrado de Compras Públicas, SICOP), based on the Mer-Link platform. This system is mandatory for central government entities and DGABCA will start a collaborative process with decentralised institutions to raise their level of interest in the use of SICOP so as to gradually expand the system to cover as many entities as possible. The fact that some entities (such as ICE, INS, municipalities, the University of Costa Rica, National University) are already using Mer-Link, will hopefully contribute to broadening the coverage of SICOP. The administration of SICOP will be conducted by RACSA (the contract will include a call-centre, training and issuance of digital certificates).

96. Both the general framework and the special regimes provide a series of mechanisms for ensuring the transparency of the procurement process. The conditions for participating in public tenders are published on the Official Journal and in the case of ICE, on its website.\footnote{http://www.grupoice.com/wps/portal/} The awarding decision is notified to bidders and, in the case of a public tendering, also published in the Official Journal. In the case of selective and limited tendering, no publication is made in the Official Journal. The files of procurement procedures can be consulted by any interested person and public institutions upload on their websites information on current bidding processes. Yet, despite the availability of information on individual websites, the fragmentation of the government procurement system makes it very difficult for interested people to find the relevant information. The use of an integrated procurement platform will hopefully facilitate access to the relevant information in one place in a more straightforward manner.
97. Potential bidders and other interested parties are allowed to file objections against bidding terms and conditions before the Contraloría for public tendering procedures or before the procuring entity in other cases. The right to appeal against final awards before the Contraloría or the procuring entity is also guaranteed and final awards are subject to judicial review.\textsuperscript{162}

98. On the other hand, the decision on the type of specifications applied to the procurement is made exclusively by the Administration. Nevertheless, the regulations to the Law on Public Procurement\textsuperscript{163} provide for the possibility to hold public hearings with potential bidders before the elaboration of the bidding document\textsuperscript{164} with the aim of clarifying the contractual object, but set no obligation on the administration to accept the views submitted during the hearings. Invitations to hearings shall be published in a national newspaper.

99. Because of the extensive use of technical regulations and ISO standards in defining the procurement specifications, consultations held when preparing technical regulations include the Ministry of Finance and Ministry of Public Works and Transportation (Ministerio de Obras Públicas y Transporte, MOPT), as well as large public procuring entities. However, the decision of a procuring entity to impose the compliance with an ISO standard as a condition of participation to the tender can be challenged by potential bidders,\textsuperscript{165} in which case the authority has the burden of justifying the need to use such standard. In some cases, the purchasing entity requests the use of ISO standards without consulting INTECO on existing domestic technical regulations. This may be an area for more inter-agency coordination.

100. Representatives from Costa Rican business and academic sectors as well as from its trading partners consistently mention the need for more transparent and efficient rules in the area of government procurement as a means to increase Costa Rica’s competitiveness. The situation in the area of public infrastructure, in particular roads and ports is a widely shared concern since some key projects have been significantly delayed\textsuperscript{166} (or even abandoned), in many cases due to appeals very frequently lodged by interested parties. Moreover, the lack of clarity in the bidding documents has been identified as a frequent source of controversy. This lack of clarity has been frequently attributed to insufficient training of officials in charge of the elaboration of bidding documents. Authorities are considering several options to address these problems, including more targeted training activities to improve management skills of procurement officials. The standardisation of tender documents and bidding processes and the centralisation of suppliers’ registration within the integrated procurement platform could also help address the problem.

101. The statistics noted in paragraph 81 above, speak of the importance of government procurement of goods and services in the Costa Rican economy. Nevertheless, the complexity of the government procurement system with its fragmentation into 19 different procurement platforms, and the length of bidding procedures that can be blocked at any stage, is perceived as a major obstacle to improving Costa Rica’s competitiveness. Furthermore, the pronounced tendency to use limited tendering to conduct procurement adds to the perception of limited market contestability. Transparency in the area of government procurement has been raised by representatives of both Costa Rica’s private sector and some of its trading partners as an issue of concern. Some of them point to the lack of certainty and predictability in the procedures as major factors discouraging the participation of potential bidders. As discussed in this


\textsuperscript{163} Article 53 of Executive Decree No. 33411.

\textsuperscript{164} Article 52 of Decree 33411 sets the conditions for the elaboration of the bidding document.


\textsuperscript{166} By way of example, the Road to San Carlos.
subsection, a decision has finally been made on a single electronic procurement platform but further steps towards its implementation still need to be taken.

2.2 **Non-discrimination**

102. Two non-discrimination principles, most favoured nation (MFN) and national treatment, are considered fundamental to the functioning of the multilateral trading system. At a basic level, they help ensure a level-playing field between like goods and services in a marketplace. The application of the MFN principle means that all foreign producers and service providers seeking to enter the national market should have equal access, regardless of the origin. The national treatment principle requires that once foreign goods, services and intellectual property enter a market, they should be treated no less favourably than their domestic counterparts. The extent to which these principles are actively promoted when developing and applying regulations is a helpful gauge of a country’s overall efforts to promote a trade and investment friendly regulatory system.

**Overall legal framework**

103. The principle of non-discrimination is embedded in Costa Rica’s Political Constitution: Based on Article 19, foreigners have the same individual and social rights and duties as Costa Rican nationals\(^\text{167}\) (with the exception of the intervention in political affairs and the exercise of some public offices) This constitutional principle is protected by the Constitutional Court\(^\text{168}\), which can review, upon receipt of an action of “unconstitutionality”, and declare unconstitutional any law or regulation considered to violate the principle of non-discrimination. The principle is further detailed in specific non-discrimination provisions included in domestic laws and regulations\(^\text{169}\).

104. As a WTO Member, Costa Rica is also bound by the commitments on national treatment embedded in various WTO Agreements, including GATT, GATS and TRIPs, incorporated in the national legal order by means of Law 7475\(^\text{170}\). Costa Rica has reaffirmed its commitment to the national treatment principle in all thirteen free trade agreements in force to which it is a party\(^\text{171}\), and even “multilateralised” some of the

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167 Foreigners shall have the same individual and social rights and duties as Costa Rican nationals, with the exceptions and limitations established by this Constitution and Costa Rican laws\(^\text{e}\). The Constitutional Court has established “reasonability” as a fundamental constitutionality requirement for any restriction or limitation between nationals and foreigners. The Court has also made a distinction between “exclusions” and “limitations” as follows: Exclusions do not recognise foreigners the right to conduct an activity (such as the prohibition to intervene in political affairs or to hold some public functions); limitations acknowledge the right of a foreigner, while restricting or limiting it in a “reasonable” manner, taking into account the protection of a group of nationals or an activity, or the fulfilment of a social objective. The Court has determined that limitations “exclusively based on nationality” must not be imposed. Viewed at: SINALEVI. [http://www.pgrweb.go.cr/scij/Busqueda/Normativa/pronunciamiento/pro_ficha.aspx?param1=PRD&param6=1&nDictamen=17555&strTipM=T#_ftn1](http://www.pgrweb.go.cr/scij/Busqueda/Normativa/pronunciamiento/pro_ficha.aspx?param1=PRD&param6=1&nDictamen=17555&strTipM=T#_ftn1).

168 Article 10 of the Political Constitution.

169 Such as, for instance, Article 44 of Law 7664 on Phytosanitary Protection (Ley de Protección Fitosanitaria), which establishes that “the phytosanitary and sanitary protection measures issued by virtue of this law shall...not be applied so as to discriminate, in an arbitrary or unjustifiable way, the importation of goods originating from countries where identical or similar conditions prevail”.

170 Law 7475 on the Approval of the Final Act in which the Results of the Uruguay Round on Multilateral Trade Negotiations are Incorporated. (Aprobación del Acta Final en que se incorporan los Resultados de la Ronda Uruguay de Negociaciones Comerciales Multilaterales).

171 Information on the FTA’s in force is publicly available on the Ministry of Trade’s website as well as on the National Legislation System website (Sistema Nacional de Legislación Vigente SINALEVI).
FTA’s preferential provisions. For instance, Costa Rica’s commitments under CAFTA-DR led to the “multilateralisation” of some preferential provisions of the agreement in the telecommunications and the insurance sectors. In this sense, all private providers, regardless of their nationality, were given the possibility through the national laws that implemented such commitments to access both markets under the same conditions as the services providers from the United States, Central America and the Dominican Republic.

105. COMEX is the government entity responsible for ensuring compliance with non-discrimination provisions and practices in the context of international trade and investment agreements. Any person, enterprise or institution, national or foreign, may present comments or requests of information to the Ministry. An electronic file is opened in the Ministry’s Agreement Administration System (SAT) when a claim is presented with respect to non-compliance or an incorrect application of a provision under a free trade agreement. In most cases, these claims entail coordination with other institutions and foreign governments. Foreign governments normally send their comments or enquiries through Costa Rica’s Permanent Mission to the WTO. In cases where a trade agreement exists between the parties, government authorities use the contact points established in the agreement to address the issue.

106. Legal exceptions to national treatment applied by Costa Rica are rather limited\(^\text{172}\) and have been notified by the Costa Rican government under the National Treatment instrument of the OECD Declaration\(^\text{173}\). They pertain to restrictions on foreign investment in access to land, and in electricity generation, mining or exploration of ores other than hydrocarbons, land transport (passengers and freight), water transport, air transport, agricultural aviation. According to Costa Rica’s Investment Policy Review, the country “ranks rather well in the OECD FDI regulatory restrictiveness index with a legal regime more open than the average for the 57 OECD and non-OECD countries covered by the Index”. Nevertheless, the Review also noted that in transport and mining, restrictions are “higher than the average for OECD countries”\(^\text{174}\). At this stage, there are no actions under consideration to remove these restrictions.

107. Other measures notified by Costa Rica for transparency under the National Treatment instrument pertain to the following: a) public order and essential security considerations; b) corporate organisation limitations regarding road transport (freight), transport (water), mining; c) public monopolies\(^\text{175}\); d) concessions\(^\text{176}\).

108. Further exceptions to the national treatment principle can be found in the area of government procurement, where Costa Rica subjects the participation of foreign suppliers to the principle of reciprocity, as explained in Section 2.1. This is a common practice among many countries that extend

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\(^\text{172}\) This is a preliminary assessment, pending the assessment of Costa Rica’s Services Trade Restrictiveness Index for the totality of the covered services sectors.


\(^\text{175}\) Public monopolies: exploration and exploitation of geothermal activities, import, refinery and wholesale distribution of crude oil and its derivatives, production and marketing of ethyl alcohol for the elaboration of alcoholic beverages, water supply and public sewage services, social service of postal communication of letter classified as letters and cards (LC) according to the Universal Postal Union; lottery sale services; electricity transmission; basic traditional telephony (fixed telecommunications).

\(^\text{176}\) Concessions: railroad, road and maritime transport services; marinas, docking facilities and airport services; radio and television broadcasting services; wireless services; electricity generation, distribution and commercialisation; mining and hydrocarbons exploration; irrigation services; maritime and air services in national ports; collection and treatment services of industrial and solid waste.
national treatment to foreign bidders originating from countries affording national treatment to their own nationals\textsuperscript{177}.

109. Domestically produced goods enjoy preference in public purchasing, provided “quality is comparable, supply is adequate and price is equal or inferior to the one of imported goods”\textsuperscript{178}. However, such preference can also be granted to a foreign company if Costa Rica has concluded an economic integration agreement or an FTA with the country of origin, and the procurement is covered under the agreement’s government procurement provisions\textsuperscript{179}. This has extended Costa Rica’s application of national treatment to a few more countries and allowed suppliers from those countries to compete on equal terms with domestic bidders in Costa Rica\textsuperscript{180}.

110. In addition to the provisions above, Article 28 of Law 7762\textsuperscript{181} (General Law on the Concession of Public Works with Public Services) establishes that in cases where nationals and foreigners equally fulfil the selection parameters for the concession, the Costa Rican offer shall prevail. Similar preferences apply to domestic SME suppliers participating in public procurement, in the case of a technical tie in a bidding procedure of goods or services\textsuperscript{182}.

111. Preference is also granted to micro, small and medium-sized domestic producers of agricultural and fisheries goods, based on Law 2035\textsuperscript{183}. Purchases of such goods by public entities take place through the National Production Council (NPC), which has to grant preferential access to domestic producers and is allowed to find other suppliers only in cases of unavailable or insufficient domestic offer.

112. The variety of legal instruments providing preferences to domestic producers or suppliers adds on to the complexity of the procurement system described in Section 2.1. Moreover, the lack of statistics on the use of such preferences makes it difficult to quantify their value and their potential impact on competitiveness. An eventual accession of Costa Rica as a Party to the WTO Government Procurement Agreement (GPA) might open access to new bidders and might contribute to bringing more clarity and efficiency in the procurement area. Costa Rica was admitted as an observer to the WTO GPA in June 2015.

113. In addition to the exceptions analysed above, Costa Rica maintains exceptions to national treatment on land in coastal zones (zona marítimo terrestre),\textsuperscript{184} concession of public works, professional services, professional services,

\begin{itemize}
  \item Article 5 of Law 7494 on Government Procurement (Ley de Adquisiciones y Compras Públicas).
  \item Article 12 of Law 7017 on Incentives to Domestic Production (Ley de Incentivos para la Producción Nacional) provides the basis for price comparison.
  \item Executive Decree 33411 containing the Regulations on the Law on Government Procurement (Reglamento a la Ley de Adquisiciones y Compras Públicas).
  \item A chapter on Government Procurement has been included in FTAs with Chile, Mexico, Panama, Dominican Republic, Peru, Singapore, as well as in CAFTA-DR, in the Association Agreement with the European Union and in the Agreement with EFTA members.
  \item Article 28 of Law 7762 on the Concession of Public Works with Public Services (Ley General de Concesión de Obras Públicas con Servicios Públicos).
  \item Article 14 of Executive Decree 33305 containing the Regulations for the Promotion of SMEs in Government Procurement. (Reglamento Especial para la Promoción de las PYMES en las Compras de Bienes y Servicios de la Administración).
  \item Article 9 of Law 2035 Organic Law of the National Production Council (Ley Orgánica del Consejo Nacional de Producción CNP).
  \item Law 6403 on Coastal Zones (Ley sobre la Zona Marítimo Terrestre), defining the two-hundred meter wide strip of land along the Atlantic and Pacific coastline as Costa Rica’s national heritage.
\end{itemize}
cargo and passenger transportation, tourism, customs transport, fishing and related services, scientific and research services, touristic marinas, telecommunications, financial services, advertising, audio visual services, and energy (electricity). Exceptions to the most-favoured nation principle are found in professional services, cargo and passenger transportation, and publicity (advertising), among others.

**Regulatory framework in the computer, construction, engineering, architecture, telecommunications and financial services**

114. Costa Rica exports of services are worth USD 6.9 billion, while imports of services are valued USD 2.1 billion in 2014. In recent years, travel, telecommunications, computer and information services, and professional services are the largest services exporting sectors, while maritime and air transport, travel and other business services are the main services imported by Costa Rica.\(^\text{185}\)

115. Trade flows in value-added terms reveal that services play a far more significant role in the Costa Rican economy than suggested by gross trade statistics. In fact, when accounting for the value added by services in the production of goods, the service sector contributes to over 40% of total exports. It follows naturally that better access to world class inputs and more efficient service sectors would enhance the productivity, and thus the competitiveness, of manufacturing firms, while at the same time facilitating their participation in global production networks. The OECD Services Trade Restrictiveness Index and its regulatory database provide a comprehensive portrait of services trade restrictions. These two tools help in benchmarking the country’s regulatory framework to global best practices as well as identifying potential bottlenecks to guide possible policy actions.

116. Figure 17 shows the STRI scores for Costa Rica in the services sectors covered so far – Computer services, Construction, Engineering and Architecture services, Telecommunication and Financial services – along with the sample average and the lowest score among the 42 countries included in the STRI database plus Costa Rica.\(^\text{186}\)

117. The indices are broken down to five policy areas. The first is *Restrictions on foreign entry* and includes foreign equity limits, restrictions on the nationality or residency of board members, screening of foreign investment and a number of other market access restrictions. The second category, *Restrictions on movement of people*, refers to barriers to movement of natural persons for the purpose of providing services on a temporary basis. The third category, *Other discriminatory measures*, reflects instances where foreign services providers do not enjoy national treatment in the host country. In addition this policy area covers the extent to which international standards are adopted in the national economy, where such standards exist. *Barriers to competition* contain measures related to the control of cartels and pro-competitive regulation in sectors where dominant firms tend to prevail. The category also captures government involvement in the economy through state-owned enterprises and the extent to which such enterprises enjoy privileges or exemptions from the competition law. Finally, the fifth policy area, *Regulatory transparency* captures to what extent the principles of transparency and consultations with stakeholders are embedded in law-making and regulatory procedures and also some measures that capture administrative hurdles facing businesses.

118. Costa Rica has a higher – i.e. more restrictive- than average score on the STRI of the sectors covered so far, with the exception of Legal services. These results can be partly explained by general regulations affecting all sectors and partly by sector-specific legislations. Labour market tests are an example of

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\(^{185}\) ITC, UNCTAD, WTO joint dataset, based on IMF statistics, 2010-2014.

\(^{186}\) The STRI results and analysis presented here are prepared by the Secretariat and, with the exception of Computer, Legal and Accounting services, all other services sectors have been fact-checked by the Costa Rican government. Nevertheless, results are still preliminary and might be subject to further modifications.
general restrictions impacting on all sectors and, in Costa Rica the temporary movement of foreign services providers is subject to the approval of the Ministry of Labour and Social Security, which recommends whether and which jobs are open or closed to foreign providers. Among other general measures having an impact there is the lengthy visa processing time, which in Costa Rica takes 25 days, on average. This particular aspect can be a significant problem in sectors, such as professional services, where the timeliness with which a foreign services provider is admitted to the country is an important factor for the efficient provision of the service. In addition, there are 9 separate administrative procedures required to register a company and obtaining the relevant permits and registrations can take a long time, raising the cost of establishment in all sectors.

Figure 17. STRI for Costa Rica, by sector and policy area

Source: OECD Services Trade Restrictiveness database, 2015.

Professional services

119. Engineering, architecture, legal and accounting services are all regulated professions in Costa Rica. Foreign services providers require a license to practice these professions in the country. Licenses are often tied to residency, and in some cases nationality, requirements and membership to the relevant professional association is a mandatory condition in order to practice professional services. In the case of engineering and architecture, it is however possible for foreign professionals who temporarily enter the country to advice State agencies or private companies, to get a temporary membership to the relevant association although the range of activities they can perform is limited to what they were specifically called up to do. Despite the compulsory membership in the relevant professional associations, and in some cases nationality or residency requirements, Costa Rica has a well-established process of recognition of foreign qualifications to facilitate the temporary movement of foreign professionals.
Architecture services

120. There is a considerable variation among countries with respect to the scope and intensity of regulations governing architectural services, with STRI values from 0.07 to 0.47. The Costa Rican STRI score for architecture is 0.28, slightly above the average of 0.22 (Figure 18).

Figure 18. STRI by policy area: Architecture services

Source: OECD Services Trade Restrictiveness database, 2015.

121. The supply of architectural services relies crucially on the temporary movement of professionals providing their services abroad and therefore it is not surprising to see that the policy area Restrictions to movement of people has a very strong impact on the restrictiveness level of this sector in all countries. In the case of Costa Rica, this first category of measures is responsible for half of the STRI score in architecture. Other horizontal measures including labour market tests and limitations to the duration of stay also contribute heavily to the score. Another policy area that adds to the score, although in a more limited way, is Restrictions on foreign entry where Costa Rica maintains specific residency and licensing requirements on the board of directors and managers of architectural firms. Costa Rica also restricts the ability of architects to freely set their fees and to advertise their services.

Engineering services

122. The scores on the STRI in engineering services range from 0.07 to 0.46 across the 43 countries covered (Figure 19), with Costa Rica at 0.28, slightly above the average score of 0.20. Engineering and Architectural services in Costa Rica have the same score and the five policy areas contribute in a similar way. Once again, Restrictions to movement of people – in the form of labour market tests – account for a large part of the STRI score, combined with Restrictions on foreign entry and Regulatory transparency, which also play a relevant, although smaller, role.
Legal services

123. Costa Rica’s STRI score in legal services (0.21) is well below the average of 0.30 (Figure 20), with measures limiting the temporary movement of people contributing the most to the score of legal services as in much of the other professional services. In this policy area, labour market tests, limitation on duration of stay and residency requirements in order to get the license to practice law in Costa Rica are among the most prominent measures. Also restrictions of fee-settings and lengthy administrative procedures to enter the country, as well as to establish a law firm, impact on the STRI score for Costa Rica.

Accounting and auditing services

124. Figure 21 reports the STRI score for accounting and auditing services by country and broken down by policy areas. The STRI values range from 0.13 to 1, suggesting a significant variation in trade restrictiveness of the countries covered in the analysis. Costa Rica’s score of 0.46, above the average (0.30), indicates a higher level of restrictiveness. In addition to those measures affecting all other professional services, namely labour market tests, limitation to duration of stay and lengthy administrative procedures, Costa Rica has in place nationality and residency requirements for accounting and auditing services. For instance, foreign nationals have to obtain the Costa Rican nationality in the two years following their integration to the College of Public Accountants. Moreover, to become a certified public accountant, foreign nationals must have been residing permanently in Costa Rica during the last five years before filing the request and there has to be a reciprocity agreement between Costa Rica and the country of origin of the applicant. Moreover, the absence of a limited or temporary licensing system further constrains foreign provisions of accounting services in the country.

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187 The STRI score for Legal and Accounting/Auditing services have been submitted to the Costa Rican government but have not been verified yet, therefore the results might be subject to possible changes.
Figure 20. STRI by policy area: Legal services

Source: OECD Services Trade Restrictiveness database, 2015.

Figure 21. STRI by policy area: Accounting/Auditing services

Source: OECD Services Trade Restrictiveness database, 2015.

Construction services

125. In the area of construction services, STRI indices range from 0.05 to 0.32, with an average of 0.16. Figure 22 presents the STRI score by country for construction services broken down by policy areas. Costa Rica’s score is on average. *Restrictions to movement of people* contribute the most to this result, mainly through horizontal measures such as labour market tests and limitations to the duration of stay, but also
because of the licensing requirements imposed on foreign construction engineers involved in construction projects. Restrictions on foreign entry and Other discriminatory measures also have a considerable impact on the score, particularly through the prohibition for foreigners to acquire land or real estate in certain restricted territorial zones and the lack of adherence to international standards (e.g. building design codes).

**Figure 22. STRI by policy area: Construction services**

![Diagram showing STRI by policy area for construction services]

Source: OECD Services Trade Restrictiveness database, 2015.

Computer services

Figure 23 depicts the indices by country for computer services, broken down by policy categories, together with a line indicating the sample average. The overall level of restrictiveness is relatively low with an average of 0.18. The STRI values range from 0.08 to 0.34, suggesting that there is significant variation in trade restrictiveness for computer services across the economies covered. However, this sector is largely composed of general measures affecting all sectors of the economy, and in the case of Costa Rica it refers to the measures described above under Restrictions to movement of people and Regulatory transparency.
Telecommunications

127. Costa Rica’s Services Trade Restrictiveness Index (STRI) score for telecommunications services is above the average of the 43 countries displayed in Figure 24, which indicates a higher restrictiveness in the telecommunications sector compared to other economies assessed under the STRI. The sector was liberalised in 2008 with a law that opened the sector and allowed new operators and providers, foreign and national. The main provider continues to be the Instituto Costarricense de Electricidad (ICE), a decentralised autonomous institution of Costa Rica. It provides fixed line telephony, mobile telephony and internet services. There are two ways in which the fixed telephony services may be provided in Costa Rica: traditional basic telephony service and voice over internet protocol. The ICE has a monopoly over traditional basic telephony service. Indeed, a special legislative concession has to be given to provide this service and currently ICE has a monopoly Telephony provided by voice over internet protocol is open to competition and is experiencing growth, but it remains a small part of the market (3% in 2013\textsuperscript{188}). ICE Group owns companies who may as well establish or participate in other companies, subject to prior approval of the Board of ICE.

\textsuperscript{188} Estadísticas del Sector de Telecomunicaciones – Informe 2010-2013, SUTEL, p. 47
128. The main contributions to Costa Rica’s STRI in this sector come from barriers to competition. The lack of mandated resale, as well as the absence of regulation of wholesale and retail roaming rates hamper market entry for new competitors. On the other hand, measures such as mandated interconnection prices, mandated collocation and site sharing contribute to competition in the market. Despite industry complaints about the requirement that all software upgrades of mobile devices be reviewed by SUTEL prior to distribution in the country, this requirement concerns software upgrades involving changes to the terminal’s basic functions and its interaction with the network, so as to protect users’ rights (see Resolution RCS-332-2013 of the Council of SUTEL). SUTEL’s web platform homologacion.sutel.go.cr enables a faster and direct application for unlicensed bands equipment and mobile terminal equipment homologation, without the need of intermediaries.

129. Barriers to the establishment of a competitive market seem to include regulatory processes and actions that favor the government owned provider, including insufficient access to spectrum for mobile providers other than ICE and difficulties for new entrants to obtain access to infrastructure including utility poles and the cable hanging on them, or the reactions of some municipalities to the construction of cell phone towers. The deployment of FONATEL universal service funds in a way that reinforces the principles of an open market without favoring a single service provider is also critical.

130. Following the opening of the telecommunications market, which began in 2008, any reallocation of the spectrum that was assigned to the State-owned monopoly ICE, or deviation from the terms of concessions already granted followed relatively slow and cumbersome administrative procedures, or entailed judicial processes based on acquired rights for prior spectrum concessions. Currently, the Government of Costa Rica is working on the rearrangement of the spectrum in order to free-up space that could be used for new concession holders as part of its effort to promote a competitive market. As a short term action to promote a competitive market and to ensure sufficient access to spectrum for mobile providers, Executive Decree No. 354-2015-TEL-MICITT was issued, drawing on a technical study undertaken by SUTEL, in order to begin the public bidding process for the assignment of 70 MHz of spectrum from the 1800 MHz and 1900 MHz/2100 MHz bands for International Mobile Telecommunications (IMT) services. The successful completion of this process will contribute to the goal
of having at least 890 MHz of spectrum assigned for IMT services by 2021, as stated in the National Telecommunications Development Plan 2015-2021. SUTEL has additionally undertaken technical studies in order to carry out another tender for narrowband services.

131. SUTEL has also intervened on several occasions in order to ensure that operators can use the infrastructure, including utility poles, which are considered a scarce resource to deploy their telecommunications networks (19 cases since 2012). Due to the existence of these legal provisions, SUTEL has not considered access to poles as a market-access issue. Two bylaws aiming to clarify the procedures and conditions for shared use of passive infrastructure were drafted by SUTEL in collaboration with the industry, through a public consultation. They are now submitted to the Regulatory Authority for Public Services ARESEP, who has the legal authority to define bylaws.

132. Finally, a Commission for Building and Expansion of Telecommunications Infrastructure, created to promote the participation of public and autonomous institutions, academia and professional associations in the discussions regarding telecommunications infrastructure, seeks to improve the regulatory framework by identifying national and municipal regulations preventing proper deployment of infrastructure, in order to work towards their modification with the respective institutions. The Commission also focusses on the efficient use of the available infrastructure, for instance by regulating the use of rights of way on railways or updating construction rules relating to telecommunications infrastructure over national roads; on awareness raising activities among public officials; and on communication and coordination among public institutions with industry players.

133. Using a multi-stakeholder model, the Commission developed an action plan, which aims at allowing the Costa Rican population to make full use of the benefits of the knowledge society through the deployment of telecommunications infrastructure in a context of competition and quality. This action plan, based on the Public Policy on Telecommunications Infrastructure, is articulated around 17 key actions, including

- improving existing regulations and decrees with a view to ensuring effective competition and strengthening users’ choice;
- issuing technical regulations meant to ensure effective competition in the use of telecommunications infrastructure for all operators;
- optimising the use of available infrastructure resources from the State and other telecommunications services operators and providers;
- establishing a Telecommunications Infrastructure Registry to identify in detail the location and availability of existing infrastructure, facilitate public planning and enhance the development, deployment and maximization of a better telecommunications infrastructure while avoiding duplication;

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189 This goal of freeing-up spectrum for IMT services is expected to be carried out in three stages. By 2016, a total of 360 MHz; by 2018, 515 MHz and by 2021, 890 MHz.

190 General Telecommunications Law 8642, Subsection 18, article 6. Law 7593 requires the Council of SUTEL to "ensure that scarce resources are managed in an efficient, timely, transparent and non-discriminatory manner, so that all operators and network providers and public telecommunications providers have access" and requires it to guarantee the right of operators to make shared use of pipes, ducts, poles, towers, stations and other facilities required for installation and operation of public telecommunications networks.

191 The Commission is composed of eight public institutions, including SUTEL and the Costa Rican Institute for Municipal Development (IFAM), and coordinated by the Viceministry of Telecommunications in MICITT.
• undertaking capacity building activities for public officials and providing relevant information to the public about the benefits and advantages of deployment of better infrastructure; and

• encouraging greater participation of industry players in informing public policy related to infrastructure.

134. The allocation of FONATEL funds to support the deployment of telecommunications networks in underserved geographical areas has taken place through public tenders, open for participation to all authorised telecommunications operators and service providers. In order to ensure universal service as defined in Costa Rica’s National Telecommunications Development Plan (PNDT) in an efficient, transparent, technologically neutral and least market distorting way, SUTEL seeks to channel FONATEL funds only to projects in areas unlikely to be covered by the operators, because of lack of economic viability, in general rural areas, border areas with low population density and to support vulnerable indigenous populations. The conditions and requirements for the projects are publicly available and interested operators can place a formal protest against them, or appeal the tender outcome before the national general comptroller office. Among the projects supported with FONATEL funds as of August 2015, six were assigned to ICE, four to Claro and three to Telefónica.

Financial services

135. The STRI database presents the indices for financial services with separate scores for commercial banking and insurance services. As for most other sectors, Costa Rica’s score is above the average of 43 countries covered in the analysis (Figures 24-25). Although the composition of Costa Rica’s scores in both sectors is not identical, the most restrictive measures are found under the policy areas of Restrictions on foreign entry and Barriers to competition. Below a detailed description of the two sectors composing financial services.

Commercial banking

136. Figure 25 reports the STRI scores for commercial banking for all 43 countries covered with a breakdown by policy area. Costa Rica’s STRI score (0.29) is ten percentage points higher than the average. The country maintains regulatory restrictions on foreign entry; foreign banks cannot establish a commercial presence through branches. The sector continues to be dominated by State banks, where no shares can be acquired by either foreign or national investors. This is because these banks are classified as autonomous institutions of public law. Moreover, commercial banks cannot engage in insurance activities in Costa Rica.

http://www.sutel.go.cr/fonatel/carteles-proyectos-fonatel
Laws and regulations allow private banks to enter the sector. There are still some restrictions applying to private banks (foreign and national): in order to take deposits they must either establish branches in remote areas or deposit 17% of their deposits in a State bank that administers the Fondo de Crédito para el Desarrollo (Development credit fund). As State banks do not have to fulfil this requirement, it can prove difficult for foreign banks to enter the country. It is similarly restrictive for national private banks.

On the other hand, the independence of the regulator is ensured, seeing that the length of heads of the supervisory authority is five years and the government cannot overrule its decisions or exercise discretionary control over its funding.

The STRI scores for insurance services are presented in Figure 26. The level of restrictions is moderate to high, with STRI values ranging from 0.05 to 0.63 and a sample average of 0.20. Costa Rica’s score is 0.23 with results mainly driven by Restrictions to foreign entry, contributing to more than half of the score.

In Costa Rica, insurance carriers that intend to provide the full range of insurance services must be locally established and no exemptions to mandatory commercial presence are allowed for the provision of insurance products that not available in the country. Barriers to competition also play a strong role in determining the STRI score for Costa Rica, with a stringent regulation on insurance premiums and rates of compulsory insurance set out by the regulatory authority, which is also responsible for the approval of new insurance products, new rates and fees. The score in this policy area also reflects the state ownership of Instituto Nacional de Seguros.
Application of the non-discrimination principle

While Costa Rica has limited de jure exceptions to national treatment, it has two cases of alleged discrimination concerning the taxation on imported beer and on imported spirits. The current taxation system on liquors in Costa Rica discriminates between imported and locally produced beer, establishing a 10% tax, which is only applied to imported beer. The revenue collected by virtue of this tax is distributed between the Instituto de Fomento y Asesoría Municipal (IFAM) and the municipalities and has a social connotation. Costa Rican authorities acknowledge that this issue, raised as a concern by some trading partners, has to be brought into conformity with the WTO. Accordingly, work has been conducted between the Ministry of Foreign Trade and IFAM for more than two years in order to find a solution. Recently, IFAM has submitted a consultation to the office of the General Attorney (Procuraduría General de la República) on the matter. A response by the General Attorney is still pending. As regards the taxation of spirits, the excise duty on spirits (impuesto específico), which is calculated on the basis of the percent of alcohol per litre, has been criticised by some trading partners as discriminating de facto against imported spirits that typically contain a higher percentage of alcohol than locally produced ones.

2.3 Measures to avoid unnecessary trade restrictiveness

Even if regulations are applied in a non-discriminatory manner, market openness can still be constrained when regulations are more restrictive vis-à-vis trade and investment than necessary to achieve their intended objectives. This can happen either at the design phase, if the impact of planned regulations on market openness is not duly considered, or at the implementation phase. OECD governments employ several tools and mechanisms to ensure that regulations avoid unnecessary trade restrictiveness, including administrative simplification, regulatory impact assessments (RIAs), trade advocacy and trade facilitation.

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193 This is a preliminary assessment, pending the assessment of Costa Rica’s Services Trade Restrictiveness Index for the totality of the covered services sectors.

194 Law 10 on Liquor Sales (Ley sobre la Venta de Licores).
Furthermore, a country’s performance in international rankings on the ease of doing business, although usually approximate, can point to general trends and problems in an economy, relative to other countries.

Costa Rica ranks 51st out of 144 economies in the World Economic Forum’s *Global Competitiveness Report* 2014-2015 and 83rd out of 189 countries in the World Bank’s *Doing Business* 2015 ranking (Table 6), scoring above the region’s average but below OECD as a whole. The country’s score has declined in both listings in recent years, scoring lowest for burdensome bureaucracy, inadequate infrastructure, and poor contract enforcement and minority investor protection. On the other hand, Costa Rica is regularly commended for its political and regulatory stability, its educated workforce and its good public health system.

| Table 6. Doing Business, 2015 |
|-----------------------------|----------------|----------------|-------------|
| Ranking of 189 countries    |                |                |             |
| Costa Rica                  | 83             | 100            | 95          |
| LAC                         | 100            | 95             | 27          |
| BRIICS                      |                |                |             |
| OECD                        |                |                |             |

*Note: The rankings for LAC, OECD and BRIICS are simple averages.*

*Source: Authors calculations based on the World Bank’s Doing Business database.*

The underinvestment in infrastructure is consistently highlighted by the private sector, the country’s trading partners and researchers as a critical element inhibiting the country’s trading capacity and a challenge to be addressed for Costa Rica to avoid the “middle-income trap”. This concerns in particular transport, port and border crossing infrastructure (discussed below); but also the country’s energy production approach.

Costa Rica performs better than the LAC region in terms of the time and the cost for starting a business, but still needs to improve its performance compared to the OECD countries (Figure 27). It also compares quite favourably to the Latin American and BRIICS average as regards the cost of enforcement of contracts, its performance being only marginally worse than the OECD average; however, it performs significantly worse than either the LAC region, the BRIICS or the OECD regarding the delays of enforcement, pointing to the slow course of justice in the country.

In the following subsections, we review the current situation in Costa Rica when it comes to potentially trade-restrictive regulations and evaluate the mechanisms used by the government to address them. We consider in particular the government’s effectiveness in reducing the overall level of administrative burdens, its capacity to consider trade and other market effects of proposed regulations during the regulatory process (e.g. through RIA), and evaluate the effectiveness of the country’s border rules and procedures, which impact directly trade flows.
Figure 27. Starting a business and enforcing contracts in Costa Rica, 2015
Comparison with the region, the OECD and BRIICS countries

Panel A. Ease of starting a business

Panel B. Enforcing contracts


Administrative simplification

147. One of the most effective mechanisms for ensuring that regulations avoid unnecessary trade restrictiveness is administrative simplification. It usually requires simplification, streamlining, reduction and (wherever possible) digitalisation of formalities required of firms, as well as rationalisation of the underlying regulations. The goal is to reduce the burden of regulations on businesses while ensuring that regulatory objectives are met. As burdensome procedures tend to affect disproportionately foreign enterprises, which may be unfamiliar with the local regulatory environment, reducing administrative burdens can facilitate trade and investment. Among others, specifically involving foreign enterprises in the consultation processes when new regulations are drafted can help identify and reduce their trade restrictiveness potential. Taking stock of regulations in key economic sectors and comparing them against a reference group of countries – as is done in the OECD Services Trade Restrictiveness Index- can also help the government understand which regulations may call for attention, and possibly revision, if greater openness is sought.

148. Regulatory impact assessments (RIAs) – used to ex ante identify and evaluate potential market effects of planned regulations – are another powerful tool at the disposal of governments. RIAs require regulators to consider whether a regulation is the most appropriate means of achieving the desired policy
outcome (or if there is a policy alternative) and what would be its likely consequences. For example: What new costs will the regulation impose on firms? Will some firms be more affected than others? What adverse consequences may this regulation have? An RIA employs the tools of cost-benefit analysis to help a regulator quantify in a systematic fashion these possible consequences of a proposed regulation or a policy alternative and make an informed choice. While not all OECD Member States use RIAs to the same extent in their regulatory processes and approaches tend to vary, it is generally accepted as a useful tool to assess business impact early in the legislative process.

Institutional and regulatory setting

149. Administrative simplification is a high priority on Costa Rica’s public policy agenda, as a tool for promoting competitiveness, attracting foreign investment and enhancing citizen welfare. Endeavours to reduce the administrative burdens on businesses and citizens in recent years have been primarily pursued through mechanisms to assess the impact of domestic regulations on the economy and gradually reduce red tape and streamline formalities in the country. One of the important axes of the 2014-2018 improvement strategy focusses on the simplification of the local government processes, in particular aiming to include those in the digital platform Crear Empresa and in the Construction Project Manager (Plataforma APC, see below, Box 5). These endeavours will need to be pursued steadfastly in the future, as a number of procedures and formalities, in particular registration and permit procedures, had grown out of proportion and are still felt as excessively burdensome by the private sector (Box 4 and Box 5 below).

150. The first, outlining stage took place in 1994, with the enactment of the Law on the Promotion of Competition and Consumer Protection195 (hereinafter Competition Law). The Competition Law set a framework of competition policy, economic deregulation and consumer protection provisions196 and introduced in the national legislation the notion of unnecessary regulation, the “silence equals consent” rule for the decisions of the administration,197 and the requirement to undertake a cost-benefit assessment of regulation. It also created the Commission for the Promotion of Competition (Comisión para promover la competencia, COPROCOM), in charge of supervising the implementation of competition policy and investigating and sanctioning anticompetitive practices.198

151. Those principles were then given shape in 2002, with the enactment of the Law on the Protection of Citizens from Excessive Paperwork and Administrative Formalities199 (hereinafter Anti-formalities Law), and the creation of the Commission for Regulatory Improvement (Comisión de mejora regulatoria). The Anti-formalities Law sought to eliminate excessive requirements and administrative burdens that affect trade and investment attraction and to improve the efficiency of general procedures available to the public, in particular by imposing to conduct a RIA for all new regulation. The Commission, composed of representatives from MEIC, the Ministry of Environment and Energy (MINAE), the Ministry of Agriculture and Livestock (MAG), COPROCOM, several Chambers, cooperatives and trade unions, and assisted by a Technical Unit, is now the champion and coordinator of regulatory reform in the country, in charge of assessing proposals for simplification and recommending appropriate action, including the repeal or amendment of laws, regulations and formalities. The executive responsibility for the daily monitoring of

195 Ley 7472/1994 de Promoción de la Competencia y Defensa Efectiva del Consumidor.


197 Eight days after the submission of the citizen’s request and in the absence of an explicit decision from the administration, the request shall be deemed approved.

198 COPROCOM’s initial competency on regulatory improvement was removed with the creation of the Commission on Regulatory Improvement.

199 Ley 8220/2002 de Protección al Ciudadano del Exceso de Requisitos y Trámites Administrativos.
the administrative simplification agenda was placed upon MEIC, through its Directorate for Regulatory Improvement and Technical Regulation (Direccion de Mejora Regulatoria y Reglamentacion Tecnica, DMRRT).

**Box 4. Dealing with environmental permits in Costa Rica**

The issuance of environmental permits is a topic which has drawn heated criticism by the private sector in Costa Rica, chiefly because of the long waiting periods for obtaining a permit. Initially established to issue permits on large new projects on the basis of the review of their Environmental Impact Assessment (EIA), the National Technical Secretariat for Environment (Secretaria Tecnica Nacional Ambiental, SETENA), was rapidly overwhelmed when its functions were enlarged to cover all projects, large, medium and small. This has led to a significant backlog of applications for environmental permits. While the average waiting period for small projects is 21 days, there is a significant delay in the processing of bigger projects, which are subject to more stringent information requirements depending on their type, including the submission of 12 different types of documents. Projects that require the submission of an environmental management plan may take up to 6 months, while for projects requiring the submission of an environmental impact assessment the delay is typically between 12 and 18 months.

One of the main causes behind the long waiting periods is the lack of clear processes, revision protocols and standardised procedures, which often lead to differing interpretations of similar cases among SETENA reviewers, and this is the area that SETENA’s current management has targeted for improvement. In particular, a document to standardise procedures for the various categories of projects is in the works and an initiative to digitise some of the procedures for smaller projects should be formalised by April 2015. However, another aggravating factor is the insufficient coordination and delayed response from other institutions involved in the permit process, in particular the National Water and Irrigation System (Sistema Nacional de Aguas Subterráneas, Riego y Avenamiento, SENARA) and the National Conservation System (Sistema Nacional de Conservacion, SINAC). This problem cannot be addressed by digitalisation efforts targeting only part of the permit process.

The idea of introducing an electronic platform similar to the APC for construction permits (discussed in Box 5 below), ideally extended to include other environment-related procedures, would maximise benefits in terms of efficiency and coordination. SETENA considers that a successful automation endeavor should be preceded by a complete reengineering of the permit system and be supported by the political will to address all organisational and legal challenges.

152. In 2010, the National Strategy for the Simplification of Formalities and Regulatory Improvement 2010-2014 noted that despite the various past initiatives, the results were not living up to the expectations. The strategy called for regulatory improvement to become a coherent part of the national development agenda, a specific focus for each institution and directly linked to a system of accountability and national scrutiny. In particular, it urged to streamline and improve the coherence of regulations and avoid duplications.

153. Finally, a third stage of reforms to advance administrative simplification was introduced in 2012 with the amendment of the implementing regulations to the Anti-formalities Law (hereinafter the Anti-formalities regulations), which launched the National Catalogue of Formalities to record and

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201 Created in 1995 by Article 83 of Law 7554 (Ley Orgánica del Ambiente).

202 For constructions smaller than 300 m³.

203 Article 9 of Executive Decree 31849.

204 Executive Decree 37045-MP-MEIC of 2012.

205 Initially introduced by Executive Decree Nº 35358-MEIC of 2009 and consolidated by the Antri-formalities Regulation of 2012.
gradually streamline applicable formalities, and imposed the preparation of Annual Plans of Regulatory Improvement for all administrations. The National Regulatory Improvement Strategy defined for the period 2014-2018 focusses on institutional regulatory reform plans, outreach to citizens and digital systems.

154. The various provisions and tools in favor of simplification have allowed streamlining several formalities having an impact on the performance and competitiveness of firms. Some of them include the regulation of wastewater discharges, permits and licenses for wells’ drilling, or the online licensing of a number of products through the establishment of a digital licensing platform (Registrelo). Particular attention was devoted to improving procedures for SMEs, including their online registration through a Business Information System (SIEC) and their access to a special SME fund (PROPYME). In other areas simplification efforts have yet to be undertaken: the registration of agrochemicals, under the responsibility of the Ministry of Agriculture suffers still from significant backlogs and industry representatives signal concern that no registration for new products has been issued in over nine years.

### Box 5. Digital platforms in Costa Rica

A number of digital platforms created in recent years in Costa Rica have allowed gradually simplifying and expediting procedures that were previously a significant burden on business and citizens. These include the **Sistema de Información Empresarial Costarricense (SIEC)** which allows the online registration of SMEs, the **Catalogo Nacional de Tramites (CNT)** which compiles standardized basic information on all administrative procedures and requirements imposed on citizens (discussed in Section 2.1), the Online Registration of Products of Sanitary Interest (Registro de Productos de Interés Sanitario en línea, Registrelo), and the Construction Project Manager (Administrador de Proyectos de Construcción, APC).

Registrelo was created in 2013 with the aim to simplify the registration of certain goods produced, imported, packed or commercialised in Costa Rica, mandated by the General Health Law and various Central American Technical Regulations (RTCA). The resource intensive nature of the registration procedures, the amount of paperwork required and the duplication of some procedures led to a very considerable backlog of applications, consistently identified by the private sector as a major hindrance for the markets of drugs, food, biomedical equipment and materials, cosmetics, or dangerous goods. In the case of cosmetics, for instance, the requirement for a certificate of Good Manufacturing Practices generates difficulties for companies from countries where such certificate is not issued, such as the United States. The platform, launched by the Ministry of Health (MS) in collaboration with Gobierno Digital and ICE, was designed to provide for standardised procedures, avoid their duplication and allow the traceability of the process, reduce waiting times, eliminate paperwork as well as the need for the physical presence of users at both the MS and banking institutions. In some cases it also allows establishing the recognition of equivalence with procedures of neighboring countries.

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206 [www.siec.go.cr](http://www.siec.go.cr)

207 [www.tramites.go.cr](http://www.tramites.go.cr)

208 [www.registrelo.go.cr](http://www.registrelo.go.cr)

209 [http://infoapc.cfia.or.cr/](http://infoapc.cfia.or.cr/)

210 Ley General de Salud 5395.

211 RTCA 11.03.64.11, RTCA 11.03.56.09, RTCA 11.04.41.06, RTCA 71.03.49.08, RTCA 71.01.35.06, RTCA 71.03.36.07, RTCA 71.03.45.07, RTCA 71.03.37.07, RTCA 71.03.38.07, Resolución 176-2006 COMIECO.

212 The GMP certificate is a requirement established under article 6.1.2 of the Central American Technical Regulation RTCA 71.01.35.06, to register cosmetics and is applied both to regionally produced and imported products so as to guarantee that all cosmetics sold in the regional market provide the same level of protection. The GMP to be applied by all laboratories producing cosmetics at the regional level are defined by Resolution RTCA 71.03.49.08.
Box 5. Digital platforms in Costa Rica (continued)

Countries. Registrelo initially included food and cosmetics, gradually expanding to raw materials, bio-medical and natural products, bio-medical material and equipment and medicines. In the course of 2015, Registrelo will finally cover pesticides, hygiene and chemical products.

Since October 2013, Registrelo has received more than 100,000 applications, 60% of which were submitted to the electronic platform directly by users, whereas the remaining 40% concerns the backlog of existing applications transferred to Registrelo from other systems. It is hoped that, once the previous backlog of applications has been absorbed, the registration of products of sanitary interest will cease being a business burden. Indeed, food registration, which would previously take 15 months, now takes a week thanks to the digital platform. In cases of products destined to the Social Security System, such as vaccines or drugs against cancer and AIDS, or certain food export products procedures can be further expedited. Nevertheless, even if the rate of rejection is less than 10%, which is considered low by the authorities, in 96% of cases, applicants are requested to correct the information submitted (for instances concerning the power of attorney, the information on the labels or the monograph with the product description). Corrections or clarifications can be provided once; in case these are not sufficient, the application is rejected and the procedure has to start all over again.

APC was launched in 2011 to streamline and expedite the administrative procedures for construction permits, the length of which used to be a significant challenge for economic activity. Applicants for a permit were required to submit construction plans to several institutions sequentially, which would lead to an average time of response of 8 months. The platform, hosted by the Association of Engineers and Architects (Colegio Federado de Ingenieros y Arquitectos, CFIA), allows for the electronic submission of construction plans for a parallel and simultaneous review by all relevant institutions within 9 weeks. This digital simultaneous review has helped reduce the time for construction plan approval to an average of 90 to 30 days. The private sector views the APC as a very successful case of administrative simplification that overcame some political resistance and could be replicated in other areas in the government.

Regulatory Impact Assessment

155. The Anti-formalities Law imposes the obligation to conduct a cost-benefit analysis of all draft regulations, amendments or proposed administrative measures that impose new formalities and requirements on citizens. This analysis includes the assessment of the impact on inward and outward trade and investment. The concerned regulatory entities in both the central and decentralised government are required to submit the draft regulations or administrative measures, together with their cost-benefit analysis to MEIC’s DMRRT. DMRRT exerts an ex-ante control and issues, within ten working days, an opinion (criterio) on the impact of the proposed regulations or measures, which is binding on central government entities but a recommendation only for decentralised government entities.

156. Past reservations about DMRRT’s capacity to enforce regulatory improvements on other government entities over which it has no hierarchical control seem to have been at least partly addressed by the establishment of clear criteria for conducting the cost-benefit analysis. These criteria cover among

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213 These products, with the exception of biomedical material and equipment are regulated under Central American Technical Regulations.

214 Regulation on the Review Procedure of Construction Plans (Reglamento para el Trámite de Revisión de los Planos para la Construcción, Executive Decree No. 36550.

215 Ministry of Health, Water and Sewage, Fire Brigade, CFIA.

216 Article 11 of Executive Decree 37045. Decentralised government includes “autonomous and semi-autonomous entities as well as entities with university autonomy”.

217 Article 13 of Executive Decree 37045.

218 World Bank, “Competitividad en Costa Rica, Mejora Regulatoria”, June 2010. The Bank has recommended the creation of an independent institution -an “Ombudsman” of regulatory improvement- with the authority to issue binding guidelines and criteria.

219 Annex 4 of Executive Decree 37045.
others the areas of legal analysis, procedures and requirements, fees, tariffs or service costs, and costs and benefits of implementation. Furthermore, a Guide was developed (as a pre-screening tool) to help the public administration determine cases where a cost-benefit analysis is required.220 This reinforced the capacity of concerned entities to consider options and evaluate trade-offs in a more systematic way, so as to ensure that the adverse impact of regulations on business is minimised, including impact on trade.

157. On the other hand, given that, in practice, decentralised entities rarely consulted DMRRT, despite their obligation to do so, a reform currently introduced to the Anti-formalities Regulation will require from these entities to include in the text of the regulation the reference number of DMRRT’s opinion. The lack of that reference, signaling the entity’s omission to consult DMRRT, will allow citizens to challenge the omission (as a “cross-control” on the entity).

158. Additional reforms are also planned to address remaining shortcomings of the cost-benefit analysis mechanism, including the lack of consideration of non-regulatory alternatives and the absence of early stakeholder consultation. The reforms will broaden the scope of the assessment, by requiring the consideration of non-regulatory alternatives in the phase of legal analysis, thus incorporating all seven OECD alternatives to traditional regulation.221 These improvements, elaborated with the technical assistance of Mexico, aim at making authorities consider and follow alternative approaches to new regulations, or provide a detailed justification in cases where those are not followed. On the other hand, one of the parameters of the analysis (the cost on the administration of verification of regulatory compliance) is currently assessed with a view to its elimination, in line with common practice internationally.

159. Finally, Costa Rica projects an improvement of the cost-benefit assessment to include the presentation of the results of the assessment in the framework of the national public consultation and the disclosure of all the observations made during the consultation to all interested parties. It is a measure that would clearly reinforce the accountability of the regulatory process and help promote buy-in from domestic constituencies. The above reforms are expected to enter into force in April 2015.

Dealing with the stock of regulations and procedures

160. Beyond its provisions to ensure an ex-ante scrutiny of new regulations and measures, the Anti-formalities Law seeks to simplify and rationalise existing public administration processes affecting individuals and businesses, and to improve their efficiency, relevance and applicability. These provisions influence all existing administrative processes, permissions or authorisations requested, or delivered by public entities, including central government, municipalities, autonomous institutions, public enterprises and non-state public bodies. In particular, the Law requires public entities to avoid duplicative procedures, to assure timely response and free access to public departments, so as to strengthen legal certainty.

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220 Evaluación Costo Beneficio de la Dirección de Mejora Regulatoria y Reglamentación Técnica, MEIC Anexo 4 Reglamento Ley 8220. The Guide contains a set of seven questions (whether the regulation creates or modifies formalities implying new requirements for the citizens; or makes existing obligations or requirements more burdensome; sets or increases the deadlines for undertaking a formality; sets or increases the royalties, fees or charges for a service; regulates or restricts a previously unregulated or unrestricted activity; makes a formality or requirement more complicated; establishes or modifies definitions, classifications, criteria or other technical terms affecting the rights, obligations or benefits of the citizens). A positive answer to any of these questions indicates the need for a cost-benefit analysis.

221 Regulatory alternatives under the reform are: Government Regulation; Performance-based regulation; Co-regulation. Non regulatory alternatives are: Market-instruments; Quasi-regulation; Self-regulation; Information campaigns.
161. The central tool for this rationalisation is the Annual Plan for Regulatory Improvement and Administrative Simplification (Plan Anual de Mejora regulatoria y Simplificación de Trámites) that each central or decentralised government entity has to elaborate. The Annual Plan requirement was initially introduced by the Competition Law, which mandated an ex-post evaluation of current regulations by all government institutions and agencies and the definition of annual reform plans in order to gradually simplify the stock of regulations. The requirement was further specified in the Anti-formalities Law and Regulations which linked the annual plans’ goals and priorities to each entity’s Institutional Operative Plan (Plan Operativo Institucional, POI) and to the budget execution, so as to enhance accountability. It was recently reaffirmed by Council of the Government of Costa Rica (Consejo de Gobierno)\textsuperscript{222}, which set deadlines for compliance and conferred a monitoring and sanctioning role to the Presidency of the Republic. It is meant to promote and ground among government entities a culture of continuous improvement of the service to the citizen.

<table>
<thead>
<tr>
<th>Box 6. Administrative simplification in the Municipality of Alajuela</th>
</tr>
</thead>
<tbody>
<tr>
<td>Alajuela is the second biggest municipality of Costa Rica after San José. Thanks to the proximity to Costa Rica’s international airport, as well as its access to road 1 (to Peñas Blancas on the border with Nicaragua) and road 27 (to Caldera on the Pacific), it presents significant appeal as a business location. Lacking the possibility to offer fiscal incentives (which would have entailed a higher level of decentralisation) it has sought to further reinforce its investment attractiveness by simplifying and streamlining applicable formalities and providing value-added services to users.</td>
</tr>
<tr>
<td>At end 2010 the municipality decided to analyse and reengineer the process concerning urban planning and construction permits, which presented a backlog of 888 applications, with an average of 74 new applications daily and a typical response delay of three to four months. Municipal services, with support from MEIC and IFAM (Municipal Development and Advice Institute) identified outdated and repetitive procedures, duplicative requirements and competencies, lack of essential information and downtime in the approval process. This allowed to restructure forms and formalities and to take appropriate steps for improving internal efficiency and customer service, using simple, modest and widely accessible tools. The process was expedited by allowing to carry out formalities online, while also maintaining paper-based processes for the 60% of rural population in Alajuela that is not entirely connected. A series of new, requirement-specific forms were introduced, so as to make the process easier to understand for each individual user. Additional web-based tools, such as Dropbox, allowed improving the communication with other concerned government agencies. Municipal services received training on the simplification of formalities, application requirements, and “silence equals consent” notions. From the beginning of the reform they focussed on new applications during normal working hours, using overtime over a six week period in order to absorb the backlog. Finally, Alajuela called upon CINDE and PROCOMER to further promote its reputation and build contacts with potential investors.</td>
</tr>
<tr>
<td>Currently 55% of construction and cadastre related applications are introduced and processed online. In addition municipal services exclusively attend to the public one day per week, preserving the rest of the week for advancing received applications. The response time has declined significantly and is now for building permits around 30 days for firms and 15 days for housing (which accounts for 72% of total permits). Similar improvements were introduced to the municipal services platform, accessed annually by around 73000 users, the waiting times of which were reduced from 22 minutes in 2012 to 8 minutes in 2015. Further improvements are foreseen to allow citizen feedback through the platform. In parallel, the municipality developed alternatives to the electronic payment of taxes through National Bank (BN) services\textsuperscript{223} in small establishments such as grocery stores, gas stations, pharmacies. 48% of tax collection is conducted through these means.</td>
</tr>
<tr>
<td>The reforms boosted industrial presence in Alajuela, which has been the first municipality of Costa Rica in terms of construction activity over the period 2011-2014, with a strong focus on job creation. Furthermore, the boom generated substantial fiscal income (rising by 146% over that same period for building permits), which the municipality must use for its budget execution.</td>
</tr>
</tbody>
</table>

\textsuperscript{222} Decision CERT-090-2014, which also called for the designation of an “Officer in charge of simplification” (Oficial de simplificación de trámites) in each involved entity. This Officer is a high-level public official within that institution (Vice-minister, Mayor, etc.), responsible for the follow-up of the Annual plan as well as for the responses to queries by citizens.

\textsuperscript{223} BN Services is a project launched by the National Bank in 2012, aiming to offer banking services in remote locations, where bank branches would not be viable, through small businesses, such as grocery stores, pharmacies, or gas stations. See more at: http://www.bnmascerca.com/verpregunta.php?id=L2X6251598CU98U4#sthash.XYoSseyj.dpuf.
channels into an aggressive plan of investment in infrastructure and public works. This included the refurbishment of a number of waste water management plants and the construction of an electricity transmission plant by ICE. The municipality also hopes to regionalise some of its plans and programs so as to allow benefits to permeate the neighbouring smaller communities.

Source: Authors, based on information from the Alajuela municipality.

162. A set of criteria for the elaboration, implementation and follow-up of the Annual Plans is available in a Methodological Guide,\textsuperscript{224} meant to assist the institutions in the preparation of their plans. The elaboration and follow-up of the Plan is entrusted to an internal Regulatory Commission and draws on the entity’s National Catalogue of Formalities (CNT, see Section 2.1), which shall be regularly updated in order to provide an accurate picture of the stock of applicable regulations and formalities. After having identified the formalities in the CNT, the concerned entity has to establish reform and improvement priorities and select five formalities for inclusion in the Annual Plan. The priorities are set based on the frequency of the formality, other involved authorities, the level of satisfaction of the users, the relevance of the formality relating to the pursued objective, the targeted users and the rate of timely responses from the administration. The institution then analyses the selected formalities to identify improvement opportunities and propose their implementation over the coming year. Objectives identified in each Plan for improving service provision or the handling of specific administrative procedures are communicated to the citizens in a “Letter of Intent”, a public information document that will allow a better visibility of reform projects and the monitoring of the progress made by the institution on those objectives and their sustainability over time. The list of all Plans for Regulatory Improvement is available on MEIC’s website.

163. These initiatives have assisted the government in controlling the number of new formalities, and simplify and automate some of the existing ones. The coordination mechanisms bringing together the various government authorities around the common goal of simplification also help avoid piecemeal approaches and ensure that the streamlining efforts are comprehensive.

Trade advocacy and trade-related inter-agency coordination

164. On a more general level, the ability to advocate market openness vis-à-vis regulatory bodies and to promote the use of least-trade restrictive measures is an important aspect of ensuring market openness. This can involve regular monitoring of planned regulations with a likely impact on trade and, wherever possible, proposing alternative policy design that would minimise the negative effect; being responsive to concerns of stakeholders affected by particular regulation (including foreign stakeholders); and mediating solutions with responsible entities, and more generally ensuring compliance with the country’s international obligations.

165. MEIC, in the context of its monitoring function in favour of administrative simplification across the government, has frequently the opportunity to advocate less trade restrictive alternatives to proposed regulations that are submitted for its review of the cost-benefit analysis. For instance, the General Regulation on veterinary certificates of operation\textsuperscript{225} was amended to take into account comments by MEIC so as to eliminate the duality that appeared in the process, requirements and fees necessary for firms who work with animal products in order to obtain a veterinary certificate of operation (required by SENASA) on the one hand, and a sanitary permit of operation (required by the Ministry of Health) on the other. Under this modification, firms that perform various activities that are supervised by the two entities should only seek authorisation under their main activity.

\textsuperscript{224} Methodological Guide for Plans on Regulatory Improvement and Letters of Intent to Citizens (Guia Metodologica para Planes de Mejora Regulatoria y Cartas de Compromiso con la Ciudadanía), developed in 2014 by MEIC and the Ministry of Planning (Ministerio de Planeacion, MIDEPLAN).

\textsuperscript{225} Executive Decree No.34859 of 2011.
166. In addition, COMEX, as the government entity responsible for foreign trade policy, has the ability to make recommendations for the amendment or revocation of regulations it considers restrictive for trade and investment (see below, Section 4). COMEX is specifically mandated by its establishment Act\textsuperscript{226} and the Law on Trade Negotiations and the Administration of Free Trade Agreements and Instruments of Foreign Trade Law\textsuperscript{227} to verify the compliance of regulations with international trade commitments and periodically assess the respect of those commitments by other government bodies. It can act either on its own initiative, at the request of another public entity, the private sector, or as part of an international consultation or dispute settlement. It is supported in its efforts by PROCOMER, in its role as the promoter of foreign trade. COMEX’s task is also facilitated by two formal coordination mechanisms, the Interagency Commission on the Implementation of Trade Agreements\textsuperscript{228} and the Foreign Trade Advisory Council.\textsuperscript{229}

167. The Interagency Commission on the Implementation of Trade Agreements is composed of representatives from COMEX, Ministry of Finance, MEIC, MAG, and Ministry of Health, with a view to fostering cooperation between government institutions on the implementation of foreign trade-related issues. It focuses in particular on Costa Rica’s commitments under bilateral, regional and multilateral trade and investment agreements, on related trade flows and on the functioning of these agreements.

168. The Foreign Trade Advisory Council is composed of representatives from COMEX, MEIC, MAG, the Ministry of Foreign Affairs, various Chambers, SMEs, consumers, CINDE and PROCOMER. It also has the possibility to invite other governmental or private entities or experts to contribute to its deliberations depending on subject at hand. The Advisory Council counsels on foreign trade and foreign investment policies and seeks to ensure the successful implementation of such policies and related international commitments by promoting coordination and cooperation mechanisms between the public and the private sector. The Council meets every two months in regular session and can also convene in extraordinary session when needed.

169. In order to perform this task COMEX undertakes a daily monitoring of draft laws and regulations and participates in various inter-institutional working groups. Trading partners’ concerns and complaints regarding the negative effects of a regulation or its non-conformity with the country’s international trade commitments are received by COMEX General Directorate of Foreign Trade. Furthermore, to support its investigations COMEX can request information from the relevant public entities or seek the assistance of appropriate experts. Its recommendations on trade and investment restrictiveness are channeled through an Interagency Commission on the Implementation of Trade Agreements and the Foreign Trade Consultative Council and compliance with them is voluntary. However, this discretionary scrutiny seems to have been successful in avoiding trade frictions (see also Section 4).

170. Beyond those advocacy efforts inside the government, MEIC and COMEX regularly put in place information and awareness programs on the impact unnecessary obstacles and barriers can have on investment and economic growth, directed to government officials, civil society and the private sector. MEIC’s DMRRT department maintains two permanent training and awareness programs, one for private stakeholders on the scope and principles of “anti-red-tape” Law 8220 and one for government and other public officials on the scope and good regulatory practices of the WTO TBT Agreement. On that basis, it has also developed several training programs to raise awareness of the need to remove unnecessary

\textsuperscript{226} Law no. 7638 establishing the Ministry of Foreign Trade and the Export Promotion Agency.

\textsuperscript{227} Law no. 8056 of 2001.

\textsuperscript{228} Executive Decree 34277.

\textsuperscript{229} Created by Law 8056/2001.
restrictions on trade. In addition, both ministries organise specific training and awareness sessions on the trade agreements concluded by Costa Rica or on topical issues in their area of competence.

171. These endeavours are particularly important as regards the promotion of good regulatory practices among decentralised public entities. While there are no formal coordination mechanisms between the central government and other levels of government, like the one there is within the central government through the Interagency Commission on Implementation of Trade Agreements and the Foreign Trade Consultative Council, COMEX works intensively on information dissemination and consultation, through different channels, which are open to participation by all groups and institutions.

172. From January 2010 to October 2014, MEIC conducted training sessions on regulatory improvement with 250 institutions, involving 2,082 public officials from the central government and the municipalities, and citizens, covering, among others, cost-benefit methodologies and best international regulatory practices. Moreover, between 2009 and 2013, 3,749 public officials, citizens and representatives from the productive sectors participated in 96 training sessions on best international practices in relation to the WTO TBT Agreement.

173. Overall, the private sector and trading partners praise MEIC’s and COMEX’s attention to their concerns and efforts to solve issues with other government agencies whose regulation may be a source of problems.

Border procedures and trade facilitation

173. Another area where simplification, streamlining and automation are particularly important is the area of border procedures. As tariff levels have declined over the years through GATT/WTO rounds, the costs imposed by such procedures have attracted growing attention from businesses. Border procedures encompass formalities and procedures in collecting, presenting, communicating and processing data requested by customs and other border agencies related to the movement of goods in international trade. Costs are generated by compliance with documentary requirements (acquiring and completing the documents and paying for their processing) and by delays of cargo processing at borders. The aims of border procedures (to collect revenue, to compile statistics, to ensure that trade occurs in accordance with applicable regulations, such as those aiming at protection of human safety and health, protection of animal and plant life, environmental protection, prevention of deceptive practices, etc.) should be pursued so as to ensure that the procedures do not create unnecessary obstacles to international trade. In other words, the lowering of trade barriers may not achieve the full efficiency of liberalisation without harmonised, simplified, fast and secured border procedures.

174. Costa Rica has consistently sought over the last twenty years to streamline its customs and international trade procedures, improve border efficiency and promote trade facilitation, evolving from its initial emphasis on revenue collection to focus on facilitation and security. It scores 47\textsuperscript{th} in the “Trading across Borders” dimension of the Doing Business Indicator and its performance compares favourably to both the LAC region and the OECD regarding the number of documents and the cost for importing or exporting; but lagging behind the OECD average in terms of time	extsuperscript{230} (Table 7). Costa Rica has been a strong supporter of the WTO Trade Facilitation Agreement (TFA). It has already notified to the WTO that it designated under Category A, for implementation upon entry into force of the TFA, all the provisions in Section I of the Agreement, apart from Article 10.1.1 on Formalities and documentation requirements and Article 10.2.2 on Acceptance of copies.\textsuperscript{231} For the implementation of these measures Costa Rica has sought

\textsuperscript{230} The launch of a Time Release Study (TRS) to identify bottlenecks in the clearance process is currently under consideration.

\textsuperscript{231} Although streamlining and simplification programs that could be considered to fulfill the provisions of Art.10.1.1 and 10.2.2 of the TFA are undertaken by most public institutions and agencies in Costa Rica under

77
the assistance of the World Bank in order to determine priorities and an adequate program for the
streamlining of formalities and the effective use of copies in trade related procedures. The TFA was
submitted to the Legislative Assembly for ratification in September 2015 as draft bill 19711. Following
approval in first debate at the Legislative Assembly and the subsequent scrutiny of the Constitutional Court
it will be subject to the second –and final– congressional vote. The Government expects congressional
approval and subsequent ratification of the agreement during the second semester of 2016.

175. Costa Rica is a member of the World Customs Organization (WCO) since 1 January 1995 and
implements the WTO Customs Valuation Agreement since 2000. It has endorsed the International
Convention on the Harmonized Commodity Description and Coding System (HS Code) in 2012. On the
other hand, Costa Rica has not yet acceded to the WCO Revised Kyoto Convention (RKC). In 2010 an
evaluation of the General Customs Law and its Regulation, conducted with the assistance of the WCO,
determined a compliance of 93.9% with the general standards of the RKC. The country plans to assess
compliance with RKC’s specific standards shortly, again with assistance from the WCO.

176. Trade facilitation efforts are led by the National Customs Service (Servicio Nacional de Aduanas,
SNA), the institution responsible for customs administration in Costa Rica, located in the Ministry of
Finance, and by COMEX, in charge of foreign trade. The regulatory framework which governs border
procedures is the General Law of Customs and its implementing Regulation, and the Central American
Uniform Customs Code (CAUCA) and implementing Regulation (RECAUCA). The leading principle of
this regulatory framework is to improve the efficiency of border controls in conformity with regional and international norms. Furthermore, since 2014 Costa Rica seeks to reinforce the fight

| Notes: | The data for BRIICS are simple average. All Doing Business 2015 rankings have been recalculated to reflect changes to the methodology and revisions of data due to new information. |


<p>| Table 7. Trading Across Borders indicators, 2015 |</p>
<table>
<thead>
<tr>
<th>documents to export (number)</th>
<th>Costa Rica</th>
<th>Latin America &amp; Caribbean</th>
<th>BRIICS</th>
<th>OECD</th>
</tr>
</thead>
<tbody>
<tr>
<td>Time to export (days)</td>
<td>14.0</td>
<td>17.5</td>
<td>17.3</td>
<td>10.5</td>
</tr>
<tr>
<td>Cost to export (USD per container)</td>
<td>1 020.0</td>
<td>1 464.1</td>
<td>1 499.8</td>
<td>1 080.3</td>
</tr>
<tr>
<td>Documents to import (number)</td>
<td>5.0</td>
<td>7.8</td>
<td>8.2</td>
<td>4.0</td>
</tr>
<tr>
<td>Time to import (days)</td>
<td>14.0</td>
<td>21.3</td>
<td>23.8</td>
<td>9.6</td>
</tr>
<tr>
<td>Cost to import (USD per container)</td>
<td>1 070.0</td>
<td>1 575.0</td>
<td>1 601.7</td>
<td>1 100.4</td>
</tr>
</tbody>
</table>

| Notes: | The data for BRIICS are simple average. All Doing Business 2015 rankings have been recalculated to reflect changes to the methodology and revisions of data due to new information. |


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232 International Convention on the Simplification and Harmonization of Customs Procedures. The convention provides standards and recommended practices for modern Customs procedures and techniques. It is composed of the Body and General Annex, which are binding on contracting parties, and of a series of Specific Annexes, which have to be implemented by those contracting parties that have accepted them.


234 Reglamento a la Ley General de Aduanas, 25270-H of 1996.


236 Reglamento del Código Aduanero Uniforme Centroamericano, Resolución 224-2008.
against illicit trade,\textsuperscript{237} namely through the creation of a Joint Commission Against Illicit Trade and the preparation of a draft law to improve legal mechanisms against contraband and tax evasion, as well as to impede the increase in this type of crimes and their links with organised crime.

177. The OECD Trade Facilitation Indicators (Figure 20) show that Costa Rica performs better than the averages in the Latin America and Caribbean region and among the OECD countries in the areas of involvement of the trade community, appeal procedures, and fees and charges. It performs very close to the OECD average and better than the LAC region in the areas of information availability, advance rulings, automation, and internal border agency co-operation. The country’s main weakness seems currently to lie in the area of external border agency cooperation where it performs less well than the average in both the above groups of countries, although it has improved its performance in recent years and could achieve further progress if it follows the related targets set by the 2014 Punta Cana Declaration and implements the Single Declaration for Central America (DUCA), expected to enter into force in 2016 (see discussion below). Performance in this area should also be improved thanks to the Border Integration Program. The program, financed by the Inter-American Development Bank includes improvements in border infrastructure and inter-institutional control tools and processes, as well as the modernization of the customs automated system (TICA), Costa Rica’s single window, and the development of new information technology tools for effective data collection and processing. Furthermore, the creation of a Central American Digital Trade Platform, which is a pillar of the Central American Trade Facilitation and Competitiveness Strategy, and aims at automating all trade documents and enabling the exchange of information among various national institutions throughout the region should also improve external border agency cooperation for Costa Rica and its neighbours. In order to reach the OECD average, Costa Rica will also need to further improve its trade facilitation performance in the area of simplification and harmonisation of documents, streamlining of procedures, and governance and impartiality.

**Box 7. The OECD trade facilitation indicators**

To help governments improve their border procedures, reduce trade costs, boost trade flows and reap greater benefits from international trade, OECD has developed a set of trade facilitation indicators that identify areas for action and enable the potential impact of reforms to be assessed. They are as follows:

**Advance Rulings:** Prior statements by the administration to requesting traders concerning the classification, origin, valuation method, etc., applied to specific goods at the time of importation; the rules and process applied to such statements.

**Appeal Procedures:** The possibility and modalities to appeal administrative decisions by border agencies.

**Co-operation – External:** Co-operation with neighboring and third countries.

**Co-operation – Internal:** Co-operation between various border agencies of the country; control delegation to customs authorities.

**Fees and Charges:** Disciplines on the fees and charges imposed on imports and exports.

**Formalities – Automation:** Electronic exchange of data; automated border procedures; use of risk management.

**Formalities – Documents:** Simplification of trade documents; harmonisation in accordance with international standards; acceptance of copies.

**Formalities – Procedures:** Streamlining of border controls; single submission points for all required documentation (single windows); post-clearance audits; authorised economic operators.

**Governance and Impartiality:** Customs structures and functions; accountability; ethics policy.

**Information Availability:** Publication of trade information, including on internet; enquiry points.

**Involvement of the Trade Community:** Consultations with traders.

OECD quantitative analysis for the group of upper-middle income countries, which includes Costa Rica, shows that the areas with the greatest impact on increasing bilateral trade flows and lowering trade costs are: formalities (procedures, fees and charges, documents, procedures), governance and impartiality, and information availability.

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\textsuperscript{237} Decree 38410-MEIC-G-SP-S-H, of 14 April 2014.
documents, automation), governance and impartiality, and information availability. The indicators involvement of trade community, advance rulings and fees and charges also have a significant impact on trade flows.
Figure 28. OECD Trade Facilitation indicators
Panel A. Costa Rica’s trade facilitation performance 2012 and 2015

Panel B. Comparison with OECD and LAC averages, 2015

Note: TFIs values range between 0 and 2, where 2 denotes the best performance possible that can be achieved. Analysis is based on TFIs latest available data as of March 2015 and the set of TFIs as constructed in “Trade Facilitation Indicators: The Potential Impact of Trade Facilitation on Developing Countries’ Trade” (OECD Trade Policy Paper No. 144, 2013) for countries outside the OECD area. The set of indicators as constructed for OECD countries in “Trade Facilitation Indicators: The Impact on Trade Costs” (OECD Trade Policy Paper No. 118, 2011) has been adjusted to follow a similar structure as for countries outside the OECD area.
Transparency and predictability of the border process

178. Costa Rica has a relatively transparent and accessible border process. Information about regulation and procedures applicable at the border is available on the websites of the Ministry of Finance (www.hacienda.go.cr), PROCOMER (www.procomer.com), the State Phytosanitary Service (www.sfe.go.cr) and the National Service of Animal Health (www.senasa.go.cr). The SNA webpages in the Hacienda website are comprehensive, although access to information is not as easy as it would be on a Customs-dedicated website. On the other hand, the documents section of the website includes a series of very comprehensive and well-articulated manuals (the Customs Procedures Guide and the Customs Tribunal Procedures Guide, among others), which greatly facilitate the understanding of all applicable procedures. Efforts are also devoted to ensuring that the site is regularly updated. A drawback of all sites is the absence of information in English. SNA is currently working to set up a Customs enquiry point to improve the accessibility of information to the users as part of the implementation of the WTO TFA. The capacitation of the staff that will run the call centre is undertaken with help from COMEX and it is expected that the enquiry point will be operational by end 2015.

179. The clustering of export or import related information on VUCE’s portal clarifies considerably the process for concerned users. Although the existence of two separate platforms, for Customs on the one hand and for other trade-related procedures on the other, rather than one all-inclusive single window, might limit the accessibility of information and user-friendliness of the border process, VUCE and TICA are connected through web services and traders can input their export or import declaration through VUCE.

<table>
<thead>
<tr>
<th>Box 8. Costa Rica’s Single Window for Foreign Trade</th>
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| As part of its administrative simplification efforts, Costa Rica has implemented a Single Window for Foreign Trade (Ventanilla Única de Comercio Exterior, VUCE). VUCE, created in 1996 to centralise and expedite the administrative procedures for imports and exports, is administered by PROCOMER. It operates on a 24/7 basis and allows electronic processing of authorisations, permits and certificates required by State authorities to engage in foreign trade operations, including certificates of origin, as well as export declarations – by means of a connection with TICA. Currently, the response time for approval of automatic licenses by MCIT is on average 19 minutes and for other agencies participating in VUCE 1.75 days. VUCE also allows simultaneous inspections for exports (already operational in the main maritime ports for containerised cargo exports).

An improved version of VUCE (VUCE 2.0) was launched in 2014, aiming to reduce by 90% the transaction costs and the time needed for the completion of all procedures. VUCE 2.0 allows for interoperability between the 16 institutions involved in foreign trade, responsible for 45 different processes (23 import permits and 22 export permits), and for electronic payments of the various transactions. It also includes a “Single Registry for Exporters” (“Registro único de exportador”) for 12 institutions with a single data entry. Through its interconnectivity with TICA it aims to reach the “zero paper” objective by 2016. On the other hand, it does not cover product registration, and the permits have to be issued by the Ministry of Health and then uploaded on VUCE. Although VUCE 2.0 allows interoperability with trading partners’ single windows, some permits and certificates, such as the certificates of origin or the phyto-sanitary permits, cannot be dematerialised, since some countries do not accept electronic versions.

Source: PROCOMER.

180. The possibility of users to request advance rulings, provided for in Costa Rica’s Customs Law, could further enhance the predictability of the process. Advance rulings can be requested on any Customs topic, including, but not limited to, all matters proposed in the WTO TFA. They have been little used by traders.

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238 MINAE, the National Seed Office, the Ministry of Health, the National Authority for Chemical Weapons, the Ministry of Public Security, the Costa Rican Institute for Fisheries and Aquaculture, the National Association for Textile Industry, the State Phytosanitary Service, the National Service of Animal Health, the Directorate of Animal Quarantine, the Directorate of Food Safety for Products and Byproducts of Animal Origin, the Directorate of Veterinary Drugs, the National Museum, the SNA, the Foreign Trade Corporation of Costa Rica and the Costa Rican Drug Institute.
in Costa Rica (in 2013 and 2014 they represented between 0.1% and 0.09 of total import declarations). The applicable provisions are largely in line with the negotiating text, ensuring the binding character of the ruling so long as the supporting information is accurate and circumstances have not changed, committing the administration to a 10-20 days issuance deadline\textsuperscript{239} and subjecting the ruling to the same appeal mechanism available for Customs matters.\textsuperscript{240} Staff devoted to issuing advance rulings is currently dispersed in various units, but the Customs administration envisages creating a harmonised procedure, possibly with the assistance and expertise of the fiscal department of the Ministry of Finance, to coordinate the intervention of those units, and reorganising the related information on the SNA website, as part of the implementation of the WTO TFA. Given the limited use of advance rulings up to now, the administration could also help promote advance rulings through awareness-raising campaigns and by making available online tools on the Customs website through which advance rulings requests can be made.

181. A number of regular consultation mechanisms are available for border process matters, including the Consultation Council for Foreign Trade and the Executive Council of the Single Window, which include representatives from the productive, business and exporting sectors. Costa Rica is currently working on a project to create a National Trade Facilitation Committee which will have permanent members from the public and the private sector. Traders’ input is a central factor for undertaking reviews of the continued relevance of formalities and requirements. In addition, Customs users, as well as other public authorities who must apply controls over commercial transactions, are extensively consulted whenever new provisions are introduced or the existing ones amended. Early 2015 five consultations on Customs matters were ongoing on the Hacienda website.

182. Consultations also take place concerning practical issues affecting daily operations. A case in point is the consultations recently undertaken by Customs about a new procedure introducing alternative payment means when an IT deficiency affecting the Free Zone Regime and the payment of local sale taxes was identified. After notification\textsuperscript{241} of the solution proposed until the necessary adjustments were made on the Customs IT system, a 10 working day period was granted for the submission of comments by the public.

Streamlining and simplification of border procedures

183. Customs declarations can be filed electronically on a 24 hours/7 days basis through the Customs Information System for Customs Control (TICA), up to 24 hours prior to the arrival of the goods. The totality of import declarations are filed that way, although only 7 to 9% of all declarations are currently submitted in advance (in the two major ports, Limon and Caldera the percentage is 52.2% and 56.4% respectively). TICA was gradually implemented since July 2005, allowing trade operators to lodge information electronically in the Single Customs Declaration (SCD) and also to submit other documents, like shipping manifests, and data, such as those required for the deposit of goods in a bonded warehouse. The intervention of a customs broker is required for the electronic submission of the SCD for definitive imports, while it is optional in the case of exports and free zone regimes.\textsuperscript{242} Payment of duties is also simplified significantly, as the amount of duties due is auto-determined by the declarant, in conformity

\textsuperscript{239}Costa Rica Customs Authority Resolution DGA-407-2010. Costa Rica’s FTAs provisions on advance rulings have different time periods for issuance (90–150 days).

\textsuperscript{240}Ibid.

\textsuperscript{241}Notification DGA-022-2014, October 2014 communicated by email and published in the Hacienda website and the Official Gazette.

\textsuperscript{242}RECAUCA III, applied by Costa Rica, provides for the mandatory use of a customs broker in case of definitive importation, while it stipulates that such intervention is optional in all other cases (RECAUCA III, art.17). The possibility to make the intervention of a customs broker optional for all imports would require an amendment of the RECAUCA and thus a decision by the Central American Council of Ministers.
with CAUCA provisions. TICA is automatically connected to the National Electronic Payment System (Sistema Nacional de Pagos Electronicos, SINPE), allowing the payment of the auto-determined duties directly from the declarant’s bank account. If the amount is not covered, the system annuls the SCD the day after the submission.

184. In addition to the Customs declaration and the payment of duties, documentary control and physical inspection decisions are automated in the TICA system thanks to a risk management module. The consignment information is analyzed on the basis of risk criteria so as to assign the appropriate inspection channel (no inspection; documentary inspection; or documentary and physical inspection). Other border agencies generally delegate documentary controls to Customs, facilitating the process for those goods that have to respond to multiple agencies requirements. In cases where a physical inspection is conducted, goods have to be moved to the bonded warehouse selected by the control Customs office. Cargo scanners are not currently in operation in the country, although their use has been taken into account in the border and port modernisation projects the government is developing. The State’s Phytosanitary Service is the authority that will lead the elaboration of a national policy in relation to the use of cargo scanners, as well as the mechanisms for their maintenance, operation and administration.

185. More generally risk management seems well developed, although the intelligence data could benefit from further improvements and the system’s use in support of control procedures is not as extensive as it could be. Customs physically inspect on average 12% of incoming goods, a percentage largely defined by the existing staff capacity, rather than the optimal rate of inspections. Among these inspections the rate of catches is around 20 to 30%. SNA’s Risk Management Directorate was endowed since 2008 with a broad competence to determine risk criteria, provisions and strategies based on customs intelligence and to categorise trade operators according to their compliance record. On the basis of the resulting risk profiles, trustworthy operators may be granted incentives in the form of simplified procedures and other facilitations in their commercial transactions. Risk profiles established in that way are also used to target post-clearance control measures and audits. No selectivity systems are currently applied for limiting physical inspections among other border agencies, although, since 2014, the Sanitary and Phytosanitary Central American Guidelines to Facilitate Trade mandate the application of a risk categorisation system to define the inspection proceedings of agricultural products at the point of entry. Currently 100% of goods under the Ministry of Agriculture’s responsibility undergo sanitary or phytosanitary inspections at the entry point, while other agencies inspect only occasionally. The phytosanitary authorities consider that they are currently equipped to perform those inspections in a timely and efficient manner without obstructing trade, but foresee to limit themselves to random inspections for medium to low risk products if this was no longer possible in the future.

186. Post-clearance control and audits can be conducted on all “customs operations, acts resulting from them, customs declarations, determination of fiscal customs obligations, payment of taxes and the actions of auxiliaries of the public customs service, and persons, natural or legal, involved in foreign trade

243 Article 55 of the Central American Uniform Customs Code (CAUCA version III, in force in Costa Rica) Auto-determination is the procedure by which the declarant, without the intervention of the Customs authority, states the tariff classification, customs value, amount of duties and all other elements included in the SCD.

244 In accordance to Directive 029-MP, of 23 June 2015.

245 Executive Decree No 34475-H of 30 April 2008.

246 COMIECO Resolution No 338-2014

247 The resolution establishes three groups of products according to their risk. High risk sanitary and phytosanitary commodities (Group A) are all inspected at the point of entry. Medium and moderate (Group B) and low or insignificant (Group C) sanitary and phytosanitary risk commodities are subject to random inspection at the point of entry.
transactions”. They are currently not automated in the TICA system and have to be completed manually, but their automation and incorporation in TICA is under study. Post-clearance controls are scheduled on the basis of the Annual Oversight Plans elaborated by SNA’s Risk Management Directorate, and using internationally established methodologies, such as WCO methodologies for ex-post value control and the WTO Customs Valuation Agreement.

Port and border crossings in Costa Rica seem to be one of the country’s major weaknesses to date. Although a number of endeavours have been put in place, as in the port of Caldera, or are in the planning phase, as the modernisation of the country’s main four border crossings of Peñas Blancas, Las Tablillas, Paso Canos and Sixaola, the existing facilities are clearly lacking the infrastructure and capacity necessary for promoting Costa Rica’s ambitions for a successful and beneficial involvement in regional and global value chains. The National Transport Plan 2011-2035 set strategic directions for the short, medium and long term for roads, ports and airports modernization and expansion of commuter rail and public transport for passengers; and the development of infrastructure projects on a larger scale attract growing interest from foreign investors. However, the lack of legal certainty has slowed down existing concession projects.

Caldera is the second biggest port in Costa Rica, dealing principally with bulk trade and to a lesser extent steel, cars and containers. The port is government owned but managed by the Sociedad Portuaria de Caldera, owned for 51% by the company running the Colombian port of Buenaventura and for the remaining 49% by three national companies, under a B.O.T concession for 20 years. The concession, which started operating in 2006, had to undertake a major overhauling of the existing facilities and a revamping of management and organisation. It has moved from a 18/24 to a 24/24 operation, from a 36 hour delay for discharging a vessel to 20 currently, and managed to increase its operations from 2.5 million metric tons in 2006 to 4 million in 2013. In 2012 it has obtained certifications for ISO 1400 (environmental management) and 9 000 (quality management), and in 2013 for ISO 28000 (supply chain security). In 2012 the creation of a Ministry of Agriculture laboratory within the port greatly facilitated the clearance of agricultural goods, which previously had to be sent to the laboratory in the Juan Santamaria airport. Caldera also clearly benefited from the implementation of new road 37 linking the port to San José, which greatly improved its connectivity. It now focuses on upgrading existing equipment and improving the capacity of berths to receive larger ships. However, Caldera is a small port (200 000 TEUs annually) and does not have the space to grow much further.

By contrast, the Puerto Limón/Moin port complex is the largest in Costa Rica, handling 1.05 million TEUs in 2013 and servicing both the US and the EU markets. The complex includes a container and general cargo terminal and a separate fuel terminal for RECOPE in Moin and is run by JAPDEVA, an autonomous public institution self-financed by the port activity. Limon has equally suffered by insufficient infrastructure and equipment investment, in particular regarding its capacity to receive large vessels. In 2012 the concession to APM Terminals to design, finance, build, operate and maintain a deep-water terminal which would increase the port’s annual throughput capacity by 1.3 million TEUs at opening, with a potential build-out of 2.7 million TEUs, was approved by the Contraloría. It was met with strong opposition from JAPDEVA’s workers union, who contested the decision in the Supreme Court and launched a strike after losing the court case in 2014. This has also inevitably affected related projects, such as the PPP with the Chinese Petroleum Corporation to build a refinery next to Moin and the modernisation of road 32 from San José to Limon. The standstill was finally resolved early 2015 and construction works began in March 2015, unleashing some of the complex’s potential for future development. The project, which is expected to start operating in 2017, also includes a primary zone adjacent to the new container terminal, which will accommodate all the public agencies that intervene in the maritime trade controls.

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248 Article 23 of the General Customs Law.

249 In accordance with article 57 of the General Customs Law Regulation. For 2014, audit actions defined within the framework of the Annual Oversight Plan were targeted towards tariff classification, customs valuation, free trade agreements and rules of origin, incorrect declaration information resulting in a lower tax payment, goods destined to the Duty Free Deposit of Golfito, temporary import regime and re-import regime.
Box 9. Costa Rican ports and border crossings (Continued)

19% of total of Costa Rican exports transit through terrestrial border crossings. Goods from neighboring countries, such as banana and meat from Nicaragua, which are shipped abroad through Costa Rican ports, are also regular user of these crossings. Peñas Blancas, on the Inter-American Highway at the border with Nicaragua is an important gateway for these goods and for Costa Rican exporters targeting the Central American market (75% of Costa Rica’s overland exports, or about 15 % of total exports, and 1.5 billion USD worth of goods, annually pass through that border station). The post is considered particularly inefficient, not only because of the poor road and border crossing infrastructure, but also because of an important lack of coordination between the various border agencies in Costa Rica and between them and their counterparts in Nicaragua. Costa Rica has taken steps to overcome similar problems plaguing the other important border post with Nicaragua, at Tablillas. A provisional post is expected to enter in operation in April 2015, which is meant to bring together all concerned border agencies on the Costa Rican side and to become an integrated post with the neighboring country. Additionally, a project of 100 million USD to develop new infrastructure and introduce state-of-the-art equipment and technology for border management in the country’s four main border crossings, supported with financing from the Inter-American Development Bank is expected to be finalised in the second semester of 2015.

The 2014 Punta Cana Declaration has called for the presentation of proposals to introduce common processes in a number of border posts in the region, including between Costa Rica and Nicaragua. Their fulfilment could provide a welcome boost in intraregional trade.

187. Since March 2011, Costa Rica implements an Authorised Economic Operators program, called Customs Facilitation Program for Trustworthy Trade (PROFAC). AEOs included in PROFAC have to be trustworthy physical or legal persons that guarantee the safety of the logistics chain, and facilitate the foreign trade of goods in their commercial and customs operations, as demonstrated by their good compliance records. The program is based on the general guidelines issued by the WCO in the SAFE Framework and other specific regulations.

188. PROFAC is a voluntary and free of charge program, in which any trade operator that fulfills the requirements may participate. In exchange for their compliance, participants enjoy special prerogatives, including reduced Customs inspections, priority in the implementation of customs controls and extended working hours for customs operations, possibility of inspection at the trader’s premises, and a possible international mutual recognition through the connection of PROFAC with corresponding programs in other countries. An additional benefit for the trader is the publicity regarding the awarded AEO certification. The certification is awarded for two years, extendable for two more years, while the AEO condition may be revoked in case of breach of PROFAC requirements.

189. PROFAC currently applies to the export sector, and the regulations for the progressive expansion of the program to the transport and import sector, as well as other members of the logistics chain, are under development. It is expected to start implementing the program for importers in a pilot mode from May 2015 and to have completed the implementation of the remaining phases in 2017. Furthermore, SNA seeks to involve the Ministries of Health and of Agriculture as part of the PROFAC, which would expand AEO benefits as regards health, sanitary and phytosanitary controls.

251 Declaración de Punta Cana, Sistema de la Integracion Centroamericana, 27.06.2014.
252 Executive Decree 36461-H of 18 March 2011.
253 The SAFE Framework of Standards to Secure and Facilitate Global Trade was adopted by the WCO Council in 2005. In 2007 it has added a section on the conditions and requirements for Authorised Economic Operators.
254 SNA currently works on an Action Plan towards a negotiation with Mexico for the mutual recognition of the two countries’ AEO programs.
190. Overall, Costa Rica’s on-going efforts to modernise and streamline its border process are commendable. They could in the medium run greatly facilitate trade and enhance the competitiveness of the economy, provided that the supporting infrastructure also evolves in the same direction. Efforts to reinforce infrastructure to and from the country’s main entry points and internal transportation network would ensure that any benefits from trade facilitation trickle down to the whole economy.

2.4. Encouraging the use of internationally harmonised measures

191. The application of diverging standards and regulations for like products in different countries – often explained by natural and historical reasons relating to climate, geography, natural resources or production traditions – confronts firms wishing to engage in international trade with significant and sometimes prohibitive costs. In order to reduce the costs created by regulatory divergence, governments can rely on internationally harmonised measures, such as international standards, as the basis of domestic regulations, when they address the policy objectives set at the national level in an appropriate manner. By virtue of the WTO Agreement on Technical Barriers to Trade and the Agreement on the Application of Sanitary and Phytosanitary Measures, the multilateral trading system encourages countries to base their technical requirements on international standards and to avoid conformity assessment procedures that are stricter than necessary to attain regulatory objectives.

192. Despite the development of global standards, there are still many areas where specific national regulations prevail, preventing manufacturers from selling their products in different countries and from enjoying full economies of scale. The concept of internationally harmonised measures refers to two complementary scenarios: reliance on international standards as the basis of domestic standards and regulations (where this is feasible and appropriate) and acceptance of foreign measures as equivalent to domestic measures in attaining a given regulatory objective.

Institutional framework

193. The institutional framework for standardisation, quality, certification, accreditation, and metrology policies in Costa Rica is set by the National Quality System (Sistema Nacional de la Calidad, SNC) and coordinated by the National Quality Council (Consejo Nacional de Calidad, CONAC). The SNC, established by Law 8279 of 2002, aims at promoting trust in the quality of goods and services produced, distributed and supplied in the country, so as to reinforce the competitiveness of the productive sector, improve general welfare and facilitate compliance with related international commitments of Costa Rica. The System incorporates the principles of the WTO Agreement on Technical Barriers to Trade and the Agreement on the Application of Sanitary and Phytosanitary Measures, the multilateral trading system encourages countries to base their technical requirements on international standards and to avoid conformity assessment procedures that are stricter than necessary to attain regulatory objectives.

194. Law 8279/2002 synthesised and modernised a number of pre-existing systems, along the lines of the country’s regional engagements, such as the bilateral FTAs with Canada, Chile, Dominican Republic and Mexico. Subsequent FTA endeavours influenced substantially the evolution of the SNC in a direction that supports the country’s export orientation: CAFTA negotiations highlighted the need for improving the quality of agro-food production, which became the focus of Costa Rica’s National Plan on Technical Regulations (Plano Nacional de Regulación Técnica, PNRT) 2007-2010; the association agreement with the EU put emphasis on cooperation and capacity building in relation to quality (Box 10); while the recent entry into force of the FTA with China provided further momentum to the SNC as a support for accessing the Chinese market and ensuring the quality of Chinese products sold domestically.

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255 Incorporated in the Costa Rican legal system by virtue of Law 7475 of 1994 on the Approval of the Incorporation of the Final Act of the Results of the Uruguay Round of Multilateral Trade Negotiations.
### Box 10. Promoting quality among SMEs

In addition to policy-related work, the SNC entities focus on efforts to raise awareness about the importance of quality as a condition to successfully commercialise and export a product and a means to foster competitiveness of Costa Rican businesses, including by:

- identifying and reaching out to specific “target groups” in various sectors of production, with a particular emphasis on SMEs;
- creating regional centers with the participation of municipalities for information and training on the importance of measuring instruments in the daily business of production and trade, in particular in regions beyond the Central Valley, where the most important economic activity is currently concentrated; and
- raising awareness of specific standard and quality requirements in various target markets abroad.

One of the most important paths of action has been MEIC’s platform CreaPYMES, which seeks to promote SME development, growth, competitiveness and entrepreneurship by facilitating their access to useful information, services, tools and programs. A dedicated website www.pyme.go.cr groups all information on regulation and formalities applicable to SMEs, including online forms and related instructions for use, as well as on access to finance and potential markets.

In September 2012, MEIC, with financial and technical support from the European Union, launched the project PROCALIDAD, meant to promote the internationalisation of Costa Rican SMEs, including their access to the EU market, by improving their compliance with international quality standards, facilitating their access to related information, and reinforcing laboratory infrastructure. PROCALIDAD’s information platform seeks to raise awareness about and train Costa Rican SMEs on the EU technical regulations and standards framework. In addition, technical assistance is offered to participating SMEs with export potential in order for them to adopt appropriate quality management and control processes in their production lines. Finally, the project aims at identifying SNC weaknesses and challenges in areas of particular interest to SMEs and helping address them through the provision of equipment and human resources capacitisation.

A similar EU-funded program, PRACAMS, was launched at the regional level to improve the access of Central American products to regional and global markets by promoting quality and compliance with sanitary and phytosanitary standards. PRACAMS seeks to achieve greater integration of the participating countries’ quality systems through the creation of a Regional Quality and SPS Implementation System. The program includes technical assistance and training for national standards, accreditation, certification, conformity assessment and metrology bodies in the region, as well as raising awareness among SMEs about the importance of quality and SPS compliance and supporting the acquisition of specialised equipment for the productive sector.

**Source:** MEIC, www.pyme.go.cr.

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195. CONAC’s main function is to set the general guidelines of the national quality system in accordance with recognised international practices and national needs. It encompasses the Ministers or Deputy Ministers of the various institutions with competence to establish technical regulations, such as the Ministry of Science, Technology and Telecommunications (MICIT), the MAG, the MS, the MINAE, the MOPT, as well as representatives of the different sectoral and business chambers, and is chaired by MEIC. CONAC constitutes an important platform for dialogue, which helps coordinate Costa Rica’s standardisation and quality policies and minimise unintended barriers to trade.

196. The actual development of technical regulations is coordinated by an inter-ministerial commission, called the Technical Regulation Body (Órgano de Reglamentación Técnica, ORT), the Technical Secretariat of which is housed in MEIC. ORT also acts as Costa Rica’s national enquiry point for the purposes of the WTO Agreement on Technical Barriers to Trade (TBT), although TBT notifications are dealt with by the Directorate-General of Foreign Trade in COMEX.

197. Sanitary and phytosanitary policy is defined by the MAG and enforced by the National Animal Health Service (Servicio Nacional de Salud Animal, SENASA), which deals with animal health veterinary public health and the environment, and the State Phytosanitary Service (Servicio Fitosanitario del Estado.

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256 Costa Rica, El Salvador, Guatemala, Honduras, Nicaragua and Panama.
SFE), which is in charge of the sanitary protection of all products of plant origin, biotechnology organisms and products for agricultural use. SFE is Costa Rica’s WTO SPS Information and Notification Service (Servicio de información y notificación en medidas sanitarias y fitosanitarias de la OMC), in charge of notifying to the WTO the country’s SPS measures. Additionally, SFE’s webpage provides access to the text of SPS chapters in Costa Rica’s FTAs as well as to the WTO-IICA Reference Center containing statistics, analysis of trade policies, economic research and publications by the WTO Institute of Technical Cooperation. The safety of processed foods and other products subject to registration is under the control of the Directorate for Regulation of Products of Sanitary Interest in the Ministry of Health.

198. Standardisation, quality testing, certification, and accreditation work is mainly carried out by two private or semi-private entities, the National Standardization Institute (Instituto de Normas Técnicas de Costa Rica, INTECO) and the Costa Rican Accreditation Authority (Ente Costarricense de Acreditación, ECA) – described further below. Technical and scientific support for this work is provided by the Costa Rican Metrology Laboratory (Laboratorio Costarricense de Metrología, LACOMET). LACOMET was created in 2002 in the framework of the National Quality System, absorbing the scientific and industrial metrology attributions previously belonging to the National Bureau of Standards and Units of Measure (Oficina Nacional de Normas y Unidades de Medida, ONNUM), which operated between 1973 and 2002. LACOMET is attached to the MEIC, which also funds LACOMET staff salaries, but enjoys autonomy, technical and administrative autonomy, being a fully decentralised body. It is the national laboratory of reference for metrology, and guarantees the equivalence of national measurement results and their calibration to reference standards.

199. LACOMET is responsible for verifying measuring instruments, supporting metrological control activities and ensuring traceability of measurements in the country, and coordinating scientific and industrial metrology with other public and private, national and international bodies. At the beginning it directed its activities on legal metrology and on support to INTECO and ECA, before reaching the maturity that allowed it to start rolling out calibration activities to a network of external laboratories. It currently focusses on temperature, mass and volume measurements. LACOMET’s system of quality management was approved by the Inter-American System of Metrology (Sistema Interamericano de Metrología, SIM) in 2007. In 2004, it has concluded a Mutual Recognition Agreement with the International Committee for Weights and Measures (CIPM-MRA), which allows international recognition of its measurement standards and the calibration and measurement certificates it issues among all CIPM participating entities.

200. In order to ensure that the national policy for technical regulations evolves in line with the needs of the productive sector and the consumers, Costa Rica also establishes every four years National Technical Regulations Plans (Planos Nacionales de Reglamentación Técnica, PNRT), elaborated by MEIC on the basis of extensive consultations with concerned regulatory bodies and the private sector and ratified by the CONAC. This planning also takes into account the requirement of international target markets (“mercados meta”), as identified by COMEX and PROCOMER. After the 2007-2010 PNRT, which focused on the quality of agro-food production, the 2011-2014 PRNT targeted the needs of the non-food industrial sector, defining a series of priority sectors, including metalworking, plastics, paints, glass, electricity and construction. The proposed PRNT for 2015-2018 will include topics related to energy efficiency, electrical products, LPG gas, and construction materials, among other topics. It is currently in the process of inter-agency consultations.

257 Instituto Interamericano de Cooperacion para la Agricultura, http://www.iica.int/Esp/Programas/agronegocios/Paginas/CentroReferenciaOMCIICA.aspx

258 The creation of LACOMET was based on a diagnostic of the country’s metrology infrastructure needs undertaken in 1984 with the support of UNDP and Germany’s metrology centre Physikalisch Technische Bundesanstalt (PTB) and initiated with assistance from the Inter-American Development Bank.

259 Equipment and training is funded through programs such as PROCALIDAD and PRACAMS.
201. The current institutional framework seems to generally operate in favour of quality and of international harmonisation of standards and technical regulations. In particular, the widely inclusive structure of the SNC, of CONAC and of the ORT helps harness the expertise of the participating entities to promote efficient and effective technical regulations, although it also complicates consensus in policy areas where there is significant divergence of views. The system offers the private sector ample opportunities to put forward regulatory proposals, while including appropriate safeguards to avoid capture. Businesses make extensive use of those opportunities, which may explain the high level of acceptance of resulting policies and measures among stakeholders.

**Technical regulations**

202. The regulatory framework for developing technical regulations in Costa Rica is composed by national and Central American provisions. National level requirements and procedures are set by Decrees 32068 of 2004 and 36214 of 2010\(^{260}\). Requirements and procedures for Central American Technical Regulations (Reglamentos Técnicos Centroamericanos, RTCA) are set in the Central American Regulation on Standardization, Metrology and Authorization Procedures \(^{261}\) and Resolution COMIECO 162-2006, which, proposed by Costa Rica, is largely inspired by its own procedural framework. The two Decrees set a clear frame of requirements, which have to be followed by relevant government authorities in the development of technical regulations. These requirements are complemented by a Guide for the Development of Technical Regulations\(^{262}\), providing step-by-step instructions to concerned authorities, and a dedicated website www.reglatec.go.cr supporting greater transparency and accountability of the regulatory process. MEIC currently seeks to further systematise the process by setting a checklist of rules for the preparation of technical regulation proposals. The proposed amendment was submitted to public consultation in December 2014 and is expected to be finalised by mid-2015 (see above, Section 2.1).

203. Based on Resolution 162-2006, requests for the drafting of a Central American technical regulation by one or more SIECA member countries are submitted to the Directors of Integration, who decide on their pertinence. If the request is accepted, it is forwarded to the Coordinators of the Technical Registration Group and the competent working subgroup, which coordinates consultations with national technical committees. The final text, approved by COMIECO, is published and incorporated into each Member State's legislation.

204. Although the development of technical regulations is a government responsibility, the participatory process established by the SNC provides ample opportunities for private sector involvement, including foreign stakeholders, from suggesting useful technical regulations to the competent ministries, commenting on draft regulations proposed by the ministries through the public consultation process, to elaborating relevant standards in support of particular technical regulations. The private sector was, for instance, extensively involved in the elaboration of technical regulations on dairy products, iron rods, recyclable packaging, or, at the Central American level, on agricultural products, food and beverages.

205. While in the past standard-setting work was viewed by both government and private sector as a preparatory stage that would allow subsequent conversion to technical regulations (such as, for instance in the area of energy-efficiency), Costa Rica’s policy is now gradually oriented towards a more sparing use of mandatory technical regulations in cases where they are deemed necessary. In 2014 there were 230 technical regulations in force, in areas such as pesticides, fuel, medicines, textiles, cosmetics, meat, dairy

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\(^{260}\) Decree n°32068-MEIC-S-MAG-MICIT-MOPT-COMEX-MINAE on the Technical Regulation Body and Decree n°36214-MEIC on the Elaboration of Technical Regulations

\(^{261}\) Resolution No. 37-99 (COMIECO XIII) of 17 September 1999, Anexo 1, Reglamento Centroamericano de Medidas de Normalizacion, Metrologia y Procedimientos de Autorizacion.

produce, garden produce, flour, oil, grains and fruit. According to the Costa Rica’s 2013 TPR, 55% of all technical regulations in force concern the food sector and would be totally or partly based on international standards.

**Box 11. Central American Regulations on Sanitary and Phytosanitary Measures and Procedures**

The Central American Regulations on Sanitary and Phytosanitary Measures and Procedures, together with "sister" Regulations on Standardization, Metrology and Authorization Procedures, were adopted in 1999 and amended in 2002 and 2011 in the context of the Central American Economic Integration Treaty. Their aim is to ensure that sanitary and phytosanitary measures and procedures do not create unnecessary obstacles to CACM intra-regional trade and trade with third countries. The SPS regulations serve as a basis for extensive harmonisation work undertaken by COMIECO, which has already covered regulations on food additives, microbiological criteria, registration of foodstuffs and of pesticides, veterinary medicines, animal feed, or dairy products.

Based on the SPS Regulations CACM Members’ sanitary and phytosanitary measures should

- be based on scientific principles and supported by appropriate scientific evidence;
- be based on risk analysis;
- be no more trade restrictive than necessary to achieve adequate protection of human, animal or plant life or health;
- be founded on international standards and recommendations, unless it is demonstrated that those standards are not an effective means for protecting human, animal or plant life or health domestically; and
- indicate the aspects on which they depart from existing international or regional norms.

The Regulations encourage the recognition of equivalence of SPS measures taken by other participating countries and set general requirements for transparency, monitoring, inspection, approval and certification procedures and the promotion of a common policy of sanitary and phytosanitary risk management.

Finally, sanitary and phytosanitary authorisations and registries in the region have to be based on the principles of equivalence, transparency and celerity and be no more burdensome than necessary to guarantee the safety of the food products.

*Source: SIECA.*

206. In the specific area of sanitary and phytosanitary measures, Costa Rica follows the harmonisation principle established under Article 4 of the WTO SPS Agreement and under the Central American Regulations on Sanitary and Phytosanitary Measures and Procedures, which promote the gradual harmonisation of sanitary and phytosanitary measures and procedures in intraregional trade. The implementation of these Regulations, which are reflected in Article 44 of the Costa Rican Law on Phytosanitary Protection strongly support the alignment of domestic regulations with international standards. On the other hand, there are significant disparities regarding the implementation and assessment of conformity among countries in the region. Furthermore, as indicated in Section 2.3, the requirement to register food, cosmetic, bio-medical and natural products, bio-medical equipment and medicines included in the General Health Law and a series of Central American Technical Regulations (RTCA) is

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264 Costa Rica is currently working with its Central American partners to develop harmonised SPS measures on UTH milk, cheese, microbiological criteria and good manufacturing practices for natural products, all based to a large extent to corresponding international standards.

265 Ley General de Salud 5395, RTCA 11.03.64.11, RTCA 11.03.56.09, RTCA 11.04.41.06, RTCA 71.03.49.08, RTCA 71.01.35.06, RTCA 71.03.56.07, RTCA 71.03.45.07, RTCA 65.03.44.07, RTCA 71.03.37.07, RTCA 71.03.38.07, Resolución 176-2006 COMIECO.
particular resource intensive for concerned administrations, resulting in important delays and backlogs in the approval process, which Costa Rica seeks now to address through the **Registrelo** platform. In addition, some trading partners raised concerns on the impact of agricultural quality standards and phytosanitary permits on the capacity to access the Costa Rican market. Those refer in particular to Costa Rica’s upcoming reform of the national technical regulation for onions and to delays or suspensions of phytosanitary import permits in the case of products such as avocados or potatoes.

207. Draft technical regulations have to be elaborated in a clear, simple and transparent way, avoid excessive formalities and requirements or unnecessary obstacles to trade, and be based on relevant international standards - existing, or nearing finalisation - inasmuch as those are suitable for achieving legitimate national policy objectives. Where international standards do not exist, or do not constitute an adequate means for achieving the stated objective, for climate, technological or other reasons, the regulatory framework establishes a clear hierarchy, calling on regulatory bodies to use as a reference, by order of priority, regional standards, such as COPANT, CEN or CENELEC standards; national standards set in Costa Rica or in third countries, such as INTECO, DIN or AFNOR standards; or professional association and sectoral standards, such as ASME, ASTM, API, or SAE standards, among others. This principle is reinforced by a series of provisions calling for the recognition of equivalence of foreign measures, included in the different trade agreements negotiated by the country. In cases where regulatory or standard setting entities judge that the relevant international or regional standards are ineffective or inappropriate for the achievement of the legitimate objectives pursued, they are required to provide the technical and scientific basis substantiating their assessment. In March 2015 Costa Rica consolidated this framework by introducing “Procedures to demonstrate the equivalence with Costa Rican technical regulations”, so as to facilitate equivalence determinations. These procedures will apply to all products entailing the assessment of their conformity with applicable technical regulations.

208. All draft technical regulations have to be submitted to ORT, which will assess that the above requirements have been met and may also provide procedural advice. The ORT has the power to ensure that the drafts are in conformity with the country’s obligations under the WTO TBT Agreement and TBT-related chapters of Costa Rica’s FTAs. It has also the mandate to monitor the use of existing international, regional or other standards of reference as a basis for the elaboration of the technical regulations. In the specific case of regulations in the food sector, MEIC’S Codex Department, in collaboration with ORT, also verifies that the draft is based on relevant Codex Alimentarius standards, unless these are not considered an appropriate means to achieve the regulation’s set objective. Although the technical opinion formulated by the ORT is not binding on the regulating entity, it is generally followed thanks to ORT’s widely inclusive

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266 As of May 2016, this reform is still at an early stage and has not yet undergone review by the ORT, prior to notification to the WTO.

267 Some trading partners complained that issuance of phytosanitary permits appeared to be delayed until domestic production is off the market; suspended as in the case of avocados; or not issued even though a phytosanitary protocol is in place, as in the case of potatoes. Some of these issues seem to be related to potential virus risks as assessed through pest risk analysis; or regulated on the basis of specific protocols negotiated by the phytosanitary authorities.

268 Including arts 7.3, 7.5 and 7.6 of the CAFTA-DR; arts 9.7 and 9.8 of the Mexico, Costa Rica, El Salvador, Guatemala, Honduras and Nicaragua FTA; arts 13.05 and 13.06 of the Costa Rica - Dominican Republic FTA; arts 9.06 and 9.07 of the Costa Rica - Peru FTA; arts 7.6 and 7.7 of Central America - Panama FTA; arts 9.06 and 9.07 of the Central America – Chile FTA; arts 131,132 and 305 of the Central America – EU Association Agreement; arts 72.73 and 74 of the Costa Rica – China FTA; arts 6.4, 6.5 and 6.6 of the Costa Rica – Singapore FTA; and the provisions of the Central American Regulation on Authorization Procedures, Metrology and Standardization.

269 Decree no 38849-MEIC of 3 March 2015.
structure described above. Finally, ORT is responsible for ensuring the transparency of the process and soliciting feedback from all interested stakeholders.

209. Once the ORT has provided its technical opinion, the proposed technical regulations are published in the REGLATEC website, and announced in the Official Journal and national newspapers, for domestic public consultations for a period of 10 days. The proposing authorities have to respond to all duly substantiated stakeholder comments, providing relevant technical and legal information in support of their position. When this public consultation process is completed, the proposed technical regulations are transmitted to the WTO in accordance with the country’s obligations under the TBT agreement. For reasons of transparency Costa Rica notifies all draft technical regulations, including those which have no impact on international trade. As with comments received through the domestic consultation process, proposing entities are bound to respond to comments, questions or observations made by WTO members in a substantiated manner, not only directly to the country that has formulated the comments, but also by making the reply publicly available on the MEIC website. Parallel consultations are undertaken in the context of the Central American Integration process (see above, Section 2.1).

Standard setting

210. Technical standards in Costa Rica are mainly developed by INTECO, created in 1987 as a private not-for-profit entity, composed of representatives from the private sector and the government. It was recognised in 1994 as the country’s national standardisation body (Ente Nacional de Normalización, ENN) and included in 2002 in the SNC. INTECO’s functions are to promote the development of standards necessary for socio-economic development and their appropriate application to the productive and commercial activities, and support them by means of quality assurance and product certification. It is mostly funded by means of its certification, standardisation and training activities, with a small direct contribution by public funds (USD 2 000 out of INTECO’s approximate budget of USD 2 000 000). In 2013 its revenues increased by 21%, generated in the first place by systems certification, followed by product certification and finally by the sale of standards.

211. INTECO is subject to the SNC rules and principles and has accepted the TBT Code of Good Practice for the Preparation, Adoption and Application of Standards and the ISO/IEC Code of Good Practice for Standardization (Guide 59). By virtue of these rules it commits to prepare standards transparently and based on internationally harmonised standards where possible and appropriate, and to avoid creating unnecessary obstacles to trade. It represents Costa Rica in international and regional standardisation organisations, such as the International Standards Organization (ISO), the International Electrotechnical Commission (IEC), the Pan American Technical Standards Commission (COPANT) and the Council for Harmonization of Electrotechnical Standards of the Nations in the Americas (CANENA). It has built partnerships and established cooperation agreements with a number of peer organisations, such as the Spanish Association for Standardisation and Certification (AENOR), or the Argentinian Standard Setting Body (IRAM), with which it develops joint certification activities, the American Society for Testing of Materials (ASTM), the National Fire Protection Association (NFPA) and Underwriters Laboratories Inc. (UL).

212. INTECO’s standardisation work takes place in 25 Technical Committees covering a wide range of issues and topics, including asphalt mixes, construction and pipeline materials, paper and cardboard, plastic containers, hydrocarbons, food standards, occupational health, environment accessibility, energy efficiency, fire protection, information technology, non-destructive testing, medical physics, social responsibility, gender equality, fluids measurement, systems quality management, environmental management, project management and conformity assessment, among others. The Technical Committees
develop around 70 to 80 standards every year in addition to conducting reviews of existing standards. To date INTECO has a stock of 1015 national standards, and expects to have developed around 3000 by 2020.

213. Standardisation work follows an annual standardisation program defined by INTECO on the basis of needs and requests expressed by the private sector and the administration, as well as the Institute’s own assessment. For instance, roughly 15% of existing standards are used in the context of government procurement activities, and 35% of the national standards developed in 2013 were motivated by requests of various public entities, including the MINAE, the MOPT or ECA. The annual program is published on INTECO’s website in advance of its implementation in order to raise awareness about upcoming standardisation activities and improve the involvement of concerned stakeholders.

214. In addition to standardisation, which was INTECO’s main objective at its creation, certification activities gradually gain prominence. INTECO quality system registration activities began in 1995 and environmental management system registration activities in 1999, in cooperation with AENOR. Today they have delivered 238 certificates, 49% of which concern quality management and 20% environmental management. INTECO also certifies for the use of “esencial Costa Rica”, the country brand developed by PROCOMER to promote exports, develop tourism and attract investment in the country.

215. Overall, standardisation and certification policy in Costa Rica has consistently promoted the use of internationally harmonised measures and, in the context of a small, export-oriented market, supported the competitiveness of the country’s companies, products and services. Although the existing testing and certification capacity is limited, it still corresponds to the size and needs of the domestic market and productive sector and does not appear at this stage to restrain the potential of the economy to benefit from globalised markets.

2.5 Streamlining conformity assessment procedures

216. Conformity assessment refers to measures taken to assess the conformity of products, processes and services to specific requirements or standards. These procedures may have the effect of facilitating trade, or they may act as technical barriers to trade. Public policy objectives like health, safety and the environment require rigorous and efficient conformity assessment procedures, which often generate significant costs of compliance for producers. However, when designed in a manner that is not more burdensome than necessary to address the public policy objectives, these procedures lead to high consumer confidence and increased sales, helping firms recoup compliance costs.

217. An important source of compliance costs for internationally traded goods is the need to demonstrate the compliance of imported products with applicable regulations in the import country through testing and certification accepted in that country. Procedures and mechanisms developed to facilitate acceptance of conformity assessments conducted by foreign conformity assessment bodies as equivalent to those conducted by domestic ones can help reduce these costs. Such mechanisms include mutual recognition agreements (MRAs) whereby trading partners agree to mutually accept conformity assessments carried out by conformity assessment bodies located in partner countries. The success of international endeavours to achieve mutual recognition is naturally reliant on the quality of testing, certification and accreditation. In order to ensure the adequacy of these activities to the needs of evolving markets, governments increasingly leave them in the hands of private entities. National accreditation bodies, which usually operate under the supervision of the public authorities, are responsible for inspecting and acknowledging the competence and

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271 This implies the testing of the product by the certification body directly or by subcontracting to an accredited laboratory, or auditing the manufacturer’s management or quality system as the case may be. The certification body will regularly follow-up to ensure that the conditions which enabled a certificate to be granted are still in place.
reliability of conformity assessment performed domestically or abroad; the establishment of a network of mutual recognition agreements among accreditation bodies, such as the International Accreditation Forum (IAF), or the International Laboratory Accreditation Cooperation (ILAC), allows multiplying the validation effect across countries by sharing inspection results.

218. In Costa Rica certification and conformity assessment procedures are subject to the same principle which applies to technical regulations, that they should not create technical obstacles to trade and should follow international reference standards and recommendations. The procedures for assessing conformity with applicable technical regulations are defined in a series of Executive Decrees, which introduce corresponding international provisions in the domestic legal framework, depending on the type of products being assessed. Methods for analyzing and sampling food products follow the procedures set by the CODEX STAN 234-1999 standard and its amendments, while conformity with technical regulations in the non-food sector is assessed in accordance with Executive Decree 37662, which is based on ISO/IEC Guide 67:2004 and other relevant ISO/IEC standards.

219. The conformity against applicable standards or technical regulations can be assessed and certified either by domestic accredited laboratories and certification bodies, public and private, or by foreign laboratories and certification bodies whose results are validated by a certification body accredited in Costa Rica, or covered by a mutual recognition agreement (MRA) concluded between Costa Rica and the country of origin of the products. The SNC Law imposes on public institutions to accept conformity assessment outcomes either from testing and calibration laboratories or inspection and certification entities accredited by ECA or those recognised by mutual recognition agreements between ECA and the equivalent international entities without discrimination. Taking into account the size of the domestic market, government entities, such as SENASA or SFE, have concentrated their testing and certification capacity in a number of selected areas, such as animal health, safety of food of animal origin, identification of plagues, pesticides quality testing, agrochemicals and pesticides residue testing, contracting out to external laboratories or entities the remaining testing and certification workload.

220. Costa Rica has signed a series of Mutual Recognition Agreements (MRAs) that allow the recognition of conformity assessment procedures performed in MRA partners, provided that they have been made by bodies accredited in the country of origin. In addition to MRAs signed by ECA (see below), since March 2013 Costa Rica has an MRA with Canada recognising the equivalence of the accreditation systems of certifiers of organic agricultural products. Furthermore, FTAs signed by Costa Rica contain provisions encouraging acceptance of requests for the recognition of equivalence of technical regulations and conformity assessment procedures (see above Section 2.4). These MRAs or FTAs generally include procedures for technical consultations in the event of non-compliance, so that failure to recognise equivalence can be raised for discussion in the framework of the institutional mechanisms established in the FTAs. In order to ensure that the recognition of equivalence of regulatory measures is undertaken in a consistent way across the various institutions, MEIC introduced “Procedures to demonstrate the equivalence with Costa Rican technical regulations” for all products entailing the assessment of their

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273 Today ISO/IEC 17067.
275 Article 34 of Law 8279/2002.
276 Decree no 38849-MEIC of 3 March 2015
conformity with applicable technical regulations. These procedures entered into force in March 2015 following public consultations on the Reglatec website.277

221. The competence and reliability of conformity assessment performed domestically or abroad is monitored and acknowledged by the Costa Rican Accreditation Authority (ECA). ECA is a not-for-profit independent public entity, created in May 2002 as an integral part of the National Quality System. It is run in accordance with the guidelines set by its Board, enjoying full administrative and commercial management independence. It is funded by gradually decreasing public funds and by the proceeds of its accreditation activities, aspiring to ultimately become financially self-sustainable. ECA is responsible for the accreditation of testing and calibration laboratories; clinic laboratories; certification bodies; inspection and verification agencies, including with respect to environmental management and green-house gas emissions; and food safety management systems. In addition to formally attesting that an entity is competent to perform specific tasks according to the requirements of international standards, it monitors and ensures that the accredited bodies continue to be technically competent and credible. Furthermore, ECA works towards raising the level of awareness of public institutions on the importance and benefits of accreditation and with both the private sector and government agencies to improve preparedness for upcoming developments (for instance on schemes to import energy efficient products). For instance, ECA is currently working with Costa Rica’s private sector in preparation for the new US legislation on third-party certification.

222. Furthermore, ECA is quite active in promoting accreditation in all scientific and technological fields, including through the signing of mutual recognition agreements and other instruments promoting the recognition by foreign accreditation bodies of accreditations granted by ECA. In order to benefit from the multiplier effect of international recognition of accreditations, ECA has actively pursued membership to international accreditation networks quite promptly following its creation. It is a full member of the Inter American Accreditation Cooperation (IAAC) since 2002, of ILAC since 2007 and a founding and active member of the Central American Accreditation Forum (Foro Centroamericano de Acreditación, FOCA) since 2006. ECA is also an observer to the European co-operation for Accreditation (EA), since 2007 and was accepted as an associate accreditation body to IAF in 2009. Within those bodies it is a signatory member of IAAC’s and ILAC’s Multilateral Recognition Arrangements for Testing Laboratories since 2006, and 2007 respectively; their MLAs for Calibration Laboratories since 2010; their MLAs for Certification Bodies of Quality Management Systems, IAAC’s and IAF’s MLAs for Product Certification Bodies and IAAC’s MLA for Inspection Bodies since 2011; and IAAC’s MLA for Environmental Management Systems since 2013. Finally, ECA became a member of the GLOBAL G.A.P framework for the accreditation of certification bodies since January 2012. In 2016, in the context of its next evaluation by IAAC it anticipates expanding the scope of its mutual recognition arrangements to cover clinical laboratories, greenhouse gases verification agencies and certification bodies for people.

223. Membership in these networks allows ECA to offer to the certification bodies it has accredited the international recognition of equivalence of their conformity assessment results without additional accreditations by foreign bodies. Likewise, it facilitates the recognition of certification results undertaken by firms abroad without the need to undergo additional certifications in Costa Rica. ECA issues a “Recognition of equivalence of the accreditation certificate” (Reconocimiento de la equivalencia del certificado de acreditación), which accredited entities can present to institutions such as Costa Rica’s Social Security Fund (CCSS) or ICE in order to secure participation to public tenders. A similar technical note of recognition is issued for products subject to specific regulatory requirements upon import, such as steel rods; the note is directly input by ECA to the Customs automated system TICA. The procedures for recognising the equivalence of certification and conformity assessment results produced abroad are laid out in ECA’s website.

224. ECA awarded its first accreditation in April 1997, and has since actively pursued efforts to promote the interest in accreditation and raise the number of accredited entities. The number of accredited laboratories increased from 54 in 2008 to 117 in 2013. By March 2015, there were in Costa Rica 99 accredited laboratories, 23 accredited inspection bodies, 6 accredited certification bodies and 3 accredited validation/verification bodies.

225. As with standardisation and certification policy, conformity assessment and accreditation in Costa Rica seems to promote international recognition of equivalence and generally support the competitiveness of the country’s companies, products and services.

3. Protection of Intellectual Property Rights

226. The last few years have seen the development in Costa Rica of an ambitious policy of intellectual property rights (IPR) protection as a catalyst for development and economic growth, although progress toward this goal has been mixed. As an outward oriented economy, Costa Rica has identified the development of a robust and effective IP system as one of the central points in its strategy to attract foreign investors and foster innovation. This policy priority is reflected in the inclusion of advanced IP provisions in Costa Rica’s FTA’s, the ratification of a number of international IP treaties, the improvement in the operation of IP-related institutions, the creation of an Inter-institutional Commission for the Protection of Intellectual Property and the elaboration and implementation of a National Intellectual Property Strategy (ENPI). Costa Rica also collaborates very closely with the World Intellectual Property Organisation (WIPO) in various capacity building activities at the domestic and regional level. Costa Rica’s legal framework for IP protection is generally well developed and the functioning of IP-related institutions is coordinated under the umbrella of a country strategy to “build respect for IPRs”.

227. Despite progress on certain fronts, challenges regarding IPR protection and enforcement remain, in particular in terms of copyright piracy and trademark counterfeiting. Delays in judicial proceedings and a shortage of official investigators, public prosecutors, and criminal and civil judges specialising in IP were seen as factors hampering effective enforcement. However, the Costa Rican authorities have recently taken action through the Economic Crimes Prosecution Office of San Jose to prosecute infringements, and have adopted ex-officio border measures through the SNA regarding counterfeiting and piracy. The steps taken by Costa Rica to address the challenges regarding IPR enforcement are detailed below (paragraphs 231 and following). In addition, a consumer awareness project was recently launched in Costa Rica by the International Trademark Association (INTA) in cooperation with the private sector. The project, named

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279 Estrategia Nacional de Propiedad Intelectual (ENPI), April 2012. Viewed at: www.ottve.una.ac.cr


282 The issue of IP enforcement is among the issues raised in annual Special 301 Reports of the United States Trade Representative, which again placed Costa Rica on the “Watch List” in 2015 (“2015 Special 301 Report”). According to the Report, “[p]lacement of a trading partner on the Priority Watch List or Watch List indicates that particular problems exist in that country with respect to IPR protection, enforcement of market access for persons relying on IPR.” https://ustr.gov/sites/default/files/2015-Special-301-Report-FINAL.pdf
“The Unreal Campaign” aims to educate young people about the value of trademarks and the dangers of counterfeit products.

228. Innovation, product diversification and business sophistication are set as priority areas in Costa Rica’s broader competitiveness agenda. Some IP-related aspects of such agenda were addressed in the OECD Investment Policy Review and specific FDI-related innovation topics were analysed by the OECD Development Centre. In this chapter, we focus on aspects of particular relevance to trade and investment.

3.1 Overview of the IP system in Costa Rica

229. The development of this ambitious IP policy was meant to address the shortcomings of a limited use of IP at a level below what would be expected, in view of the economy’s significant competitive advantages in terms of trade. Overall, in 2010 Costa Rica invested around 0.4% of GDP for R&D, in contrast with an OECD average of 2.3%, while its optimal rate, according to the ENPI, should have been at around 1.6% of GDP. (Figure 29). The level of utilisation of IP by local innovators is also limited. The number of patent applications by Costa Rican nationals was around 5% in 2013 and 2014, which is below the OECD and regional averages (Table 8). This is partly due to low awareness of domestic companies about the availability of IPR protection tools.

230. Other areas where Costa Rica is lagging behind, based on World Bank indicators are the ratio of researchers per million inhabitants, the number of scientific articles produced, the protection of IP and the cluster development allowing specialisation and innovation. In this regard, the OECD has already recommended to Costa Rica to “actively engage in a campaign promoting the innovation culture on the domestic front...as a means to address the duality between FDI and the rest of the economy”. In particular, it has been suggested to break “the vicious cycle that simplistically associates knowledge and technology with foreign action and traditional activities with domestic agents”.

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283 ENPI, 2012.
286 ENPI, 2012.
288 Costa Rica aimed as a first step at increasing investment in R&D to 0.9% of GDP by 2015. ENPI 2012.
289 ENPI, 2012.
290 OECD (2012) Attracting knowledge-intensive FDI to Costa Rica. Challenges and Policy Options. Making Development Happen Series No 1. OECD Publishing. The study further highlights “there are innovative Costa Rican companies operating in both high tech (such as medical devices) and traditional sectors (like agri-foods)” and suggests to “increase the number and collaborations of these innovative and knowledge-centred companies”.

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Figure 29. Investment in R&D in Costa Rica
As % of GDP

Source: WDI.

Table 8. IPR applications by residents, 2014

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<td>5 893</td>
<td>838</td>
</tr>
<tr>
<td><strong>Industrial Design Applications</strong></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>2010</td>
<td>10</td>
<td>57</td>
<td>2</td>
</tr>
<tr>
<td>2011</td>
<td>18</td>
<td>52</td>
<td></td>
</tr>
<tr>
<td>2012</td>
<td>21</td>
<td>48</td>
<td>141</td>
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<tr>
<td>2013</td>
<td>25</td>
<td>57</td>
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</tr>
<tr>
<td>2014</td>
<td>7</td>
<td>40</td>
<td>5</td>
</tr>
<tr>
<td><strong>Utility models</strong></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>2010</td>
<td>7</td>
<td>8</td>
<td></td>
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<tr>
<td>2011</td>
<td>10</td>
<td>3</td>
<td>1</td>
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<tr>
<td>2012</td>
<td>6</td>
<td>4</td>
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<tr>
<td>2013</td>
<td>3</td>
<td>7</td>
<td>2</td>
</tr>
<tr>
<td>2014</td>
<td>5</td>
<td>4</td>
<td>1</td>
</tr>
<tr>
<td><strong>Plant variety</strong></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>2010</td>
<td>0</td>
<td>0</td>
<td>0</td>
</tr>
<tr>
<td>2011</td>
<td>3</td>
<td>2</td>
<td>5</td>
</tr>
<tr>
<td>2012</td>
<td>0</td>
<td>5</td>
<td>15</td>
</tr>
</tbody>
</table>

Source: WIPO, IP statistics database and National Seeds Office and UPOV.
In terms of trademark registration, applications submitted by Costa Rican nationals account for around 50% of total applications. Authorities report a slight increase in these applications that they attribute to awareness-raising activities targeting local producers on the importance of trademark protection (see discussion below).

The market for copyrighted music is very small; there are only 2 digital music services in the country, and these face competition from piracy. Pirated music accounts for more than half of the records sold or downloaded in Costa Rica. The estimated economic losses associated with pirated DVDs and music range around USD 1.5 M annually. However, “the small-time nature of the crime, court fees and limited enforcement options often deter artists and entertainment businesses from pressing charges”.

Costa Rica has registered two national geographical indications (GIs) (Banano de Costa Rica and Café de Costa Rica, for bananas and coffee respectively) as well as the appellation of origin Queso Turrialba (Turrialba cheese) at the domestic level. Banano de Costa Rica is the only one registered under the Lisbon Agreement system. Local producers have also taken advantage of the country’s trade agreements to seek and obtain protection in Europe for the two GIs Banano de Costa Rica and Café de Costa Rica under the Association Agreement between Central America and the European Union. In addition, there are 1127 foreign GIs registered, none of them from neighboring Central American countries. This large number is partly due to the fact that Costa Rica is a Party to the Lisbon Agreement and the International System of Appellation of Origin.

According to Costa Rica’s Law on Trademarks and Other Distinctive Signs, a term is “common or generic where it is considered as such by those familiar with this type of product and by the public in general.” The generic character of the sign, or an element of this sign, under consideration is analysed on a case by case basis and interested parties usually submit customer perception evidence as part of the GI registration process. In case of registration of a compound GI including a generic term, the protection granted does not extend to the generic term. The publication of applications to register GIs in the Official Gazette allows interested parties to find out about them and they have two months following this publication to file an opposition before the Industrial Property Registry. The decisions of the Industrial Property Registry can be appealed before the Tribunal Registral Administrativo, an independent administrative body, or directly to the judiciary. Registration procedures for GIs in Costa Rica have received criticism from a trading partner and trade associations representing a range of members participating in the Costa Rican market that the procedures do not provide a clear avenue for an interested party that does not oppose registration of the compound GI but seeks a determination as to whether an individual included term is generic. The concerned parties consider that the alleged lack of procedural

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291 Deezer and iTunes, according to http://evolver.fm/2012/08/22/what-music-services-are-available-where-the-ifpis-list-is-a-good-place-to-start/


293 According to San José Municipal Police Chief Marcelo Solano.

294 http://www.ticotimes.net/2015/02/21/costa-rica-bootleggers-help-film-buffs-catch-up-on-oscar-nominated-movies

295 Lisbon Agreement for the Protection of Appellations of Origin and their International Registration.

296 As of 5th May 2016

297 Article 75(c) of Law no. 7978 (Law on Trademark and Other Distinctive Signs).

298 Article 75 of the Law No. 7978.
clarity as well as certain other determinations for specific cases has a potential negative impact on the country’s market openness. Other trading partners consider that Costa Rica’s GIs registration system is fully in line with the one in place in a majority of OECD members, is compatible with international obligations of the country and does not negatively impact Costa Rica’s market openness.

National Strategy for IP protection in Costa Rica

235. In order to ensure buy-in from the various involved entities in the effort to place IP policy at the centre of the development and economic growth agenda, Costa Rica elaborated in 2012 a National Strategy on Intellectual Property (Estrategia Nacional de Propiedad Intelectual, ENPI). The ENPI was developed through a broad participatory process involving representatives of industry, academia and civil society groups at the domestic and the international level, which allowed it to identify the main challenges faced by the country in the field of IP. In particular, the ENPI pointed to the need of raising awareness about the importance of generating IP, as well as of the benefits of IP protection as a development tool, in general, and as a competitiveness strategy in particular; building a culture of respect to IP rights, including through the effective implementation of enforcement procedures; and more importantly, elevating IP to the level of state policy and develop the related sectoral policies to ensure its sustainability and permanence beyond political cycles.

236. The ENPI is structured around five strategic objectives:

- fostering the creation of IP and its use in research activities, business development and creative initiatives;
- strengthening the institutional framework for IP;
- raising awareness in the population on the importance of IP;
- increasing the competitiveness of the productive sector; and
- promoting the social, economic and cultural development of the country.

237. It has also set the framework for pursuing a number of activities to fulfil the strategic objectives, including the promotion of an IP culture among SMEs with export potential; the promotion of public-private partnerships regarding innovation; awareness-raising activities to foster a culture of respect of IPRs among users; or the development of guidelines regarding the prosecution of IP-related infringements. It may be premature to assess the impact of the ENPI on IP use and protection in the country, in particular the ability of concrete implementing actions which have been taken in its context (such as the nation-wide campaigns to build a culture of respect to IPRs, or the specialisation of the Economic Crimes Prosecution Office to prosecute IP-related infringements) to result in real change. The fact that the ENPI objectives were embedded in the National Development Plan (PND) 2015-2018 as well as in the National Development Plan on Science, Technology and Innovation 2015-2021, points to the direction of a
sustained implementation beyond political cycles. As will be discussed below, enforcement remains a priority area for further action.

238. A key element in the implementation of the ENPI is the Inter-institutional Commission for IP Protection (Comisión Interinstitucional para la Protección de la Propiedad Intelectual, CIPPI)\(^\text{300}\), which was created in 2009 to promote coordination and cooperation in support of the effective implementation of IPRs and which launched the ENPI in cooperation with WIPO. CIPPI is composed of representatives from the Ministries of Justice (chairing the CIPPI), Public Safety and Security, Science and Technology, Agriculture, COMEX and Culture, the National Registries of Copyright and Related Rights and of Industrial Property, Customs, the Office of the Public Prosecutor and the Agency for Judicial Investigations. This extensive membership and the possibility to interact with private organizations dealing with intellectual property and rights holders, when appropriate, allows CIPPI to exert a very wide impact. Its fundamental role in increasing cooperation among different government institutions as well as between its member institutions and other public and private actors was acknowledged by WIPO.\(^\text{301}\) The Ministry of Justice is in charge of monitoring implementation of the ENPI through CIPPI’s member institutions and also convenes meetings in order to discuss and encourage the adoption of measures required for IPR enforcement. CIPPI has reportedly met less frequently in recent years, which could represent a potential setback. However, throughout 2016, a calendar of ordinary monthly meetings allows monitoring the implementation of the ENPI and provides private sector organizations the opportunity to voice their IP-related concerns.

The legal and policy framework

239. In Costa Rica, the Political Constitution provides the legal foundations for the IP rights system. By virtue of Article 47 “every author, inventor, producer or merchant shall temporarily enjoy exclusive ownership of their work, invention, trademark or trade name, in accordance with the law”. The system has been built-up through the international IP rights treaties ratified by Costa Rica (Table 9) and the implementing national legislation. As a Member of the WTO, Costa Rica is also bound by the provisions of the TRIPS Agreement, which specifies minimum standards of IP protection that countries need to provide and is subject to the WTO Dispute Settlement Mechanism.

240. National legislation (detailed in Box 12 below) provides for protection of copyright and related rights, patents, industrial designs, trademarks, geographical indications, plant varieties, and undisclosed information, including test data. The Law on the Enforcement of Intellectual Property Rights\(^\text{302}\) sets out the mechanisms to enforce these rights.


\(^{302}\) Ley de Procedimientos de Observancia de los Derechos de Propiedad Intelectual, No. 8039 of 12 October 2000.
Box 12. Main themes of the national legal framework for IP

**Trademarks.** The Law on Trademarks and Other Distinctive Signs\(^{303}\) includes the possibility to grant protection to collective trademarks and to incorporate sound and scent marks.

**Geographical indications.** Costa Rica provides protection to all sorts of products through the Law on Trademarks and Other Distinctive Signs and the Regulation for the Protection of Geographical Indications and Appellations of Origin\(^{304}\). The protection of geographical indications has mainly focused on national agribusinesses (i.e., bananas and coffee) and small producers.

**Patents.** Protection for any invention for all technology fields, and applicable legal exceptions may be found in the Law on Patents\(^{305}\). Legal exceptions to patent protection established in the Law are the same as those contained in Article 27.3 of the TRIPS Agreement. In addition, Costa Rica is signatory of the Patent Co-operation Treaty, whereby registration procedures are equal to those available in the member countries to such agreement.

**Test data protection.** The national legislation\(^{306}\) grants five years of protection for pharmaceutical products and ten years of protection for agrochemical products. The test data protection covers new products only, which are those that do not contain a chemical entity that has been previously approved in the country.

**Copyrights and related rights.** According to national legislation\(^{307}\), a protection period of 70 years is granted after the death of the author, artist, performer or producer. The same period is granted to broadcasting organisations. Additional provisions regarding effective technological measures and management information rights were established by law, as well as exceptions applicable to libraries and educational institutions. Furthermore, Costa Rica has introduced measures to limit the liability of Internet Service Providers in cases where third parties infringe copyrights and related rights through their networks\(^{308}\).

**Plant varieties.** The Law on the Protection of Plant Varieties\(^{309}\) provides protection to a plant variety that meets the requirements of novelty, distinctiveness, uniformity, stability and denomination. This protection is granted for 20 years from the date of grant, or, in the case of plant varieties of perennial species, for 25 years.


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\(^{303}\) Ley de Marcas y Otros Signos Distintivos, No. 7978 of 6 January 2000).

\(^{304}\) (Reglamento de las Disposiciones Relativas a las Indicaciones Geográficas y Denominaciones de Origen, Executive Decree No. 33743 of 14 March 2007).

\(^{305}\) (Ley de Patentes de Invención, Dibujos y Modelos Industriales y Modelos de Utilidad y sus reformas, No. 6867 of 25 April 1983).

\(^{306}\) (Ley de Información no Divulgada, Law No. 7975 of 4 January 2000 and Reglamento a la Ley de Información no Divulgada, Executive Decree No. 34927 of 28 November 2008).

\(^{307}\) (Ley de Derechos de Autor y Derechos Conexos, Law No. 6683 of 14 October 1982 and Reglamento a la Ley de Derechos de Autor y Derechos Conexos, Executive Decree No. 24611 of 4 September 1995).

\(^{308}\) (Reglamento Sobre la Limitación a la Responsabilidad de los Proveedores de Servicios por Infracciones a Derechos de Autor y Conexos de Acuerdo con el Artículo 15.11.27 del Tratado de Libre Comercio República Dominicana – Centroamérica – Estados Unidos, Executive Decree No. 36880 of 18 October 2011).

\(^{309}\) (Ley de Protección de las Obtenciones Vegetales, Law No. 8631 of 19 March 2008 and Reglamento a la Ley de Protección de las Obtenciones Vegetales, Executive Decree No. 35677 of 19 November 2009).
Table 9. International intellectual property rights treaties ratified by Costa Rica

<table>
<thead>
<tr>
<th>Treaty Instrument</th>
<th>Entry into force</th>
</tr>
</thead>
<tbody>
<tr>
<td>Convention for the Protection of Producers of Phonograms Against Unauthorized Duplication of Their Phonograms</td>
<td>Accession March 1, 1982</td>
</tr>
<tr>
<td>WIPO Cooperation Treaty</td>
<td>Accession May 3, 1999</td>
</tr>
<tr>
<td>WIPO Performances and Phonograms Treaty</td>
<td>Ratification: May 23, 2000</td>
</tr>
<tr>
<td>Marrakesh Treaty to Facilitate Access to Published Works for Persons Who Are Blind, Visually Impaired or Otherwise Print Disabled</td>
<td>Ratification: May 23, 2000</td>
</tr>
<tr>
<td>Trademark Law Treaty</td>
<td>Ratification: July 17, 2008</td>
</tr>
</tbody>
</table>

Source: COMEX.

241. In the past 15 years, the IPR legal framework underwent significant reforms to comply with obligations, not only under the WTO TRIPs Agreement, but also with commitments undertaken in the context of FTA’s. The provisions of CAFTA-DR are a particular case in point. The commitments undertaken in the context of this FTA contributed to upgrading the level of protection provided for in the TRIPS Agreement. Examples of this are the introduction of exclusive periods of protection for pharmaceutical and agrochemical test data; the establishment of mechanisms to limit the liability of

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FTA’s with Chile (only for geographical indications in the chapter on market access for trade in goods), China, Mexico, Panama, Peru, Dominican Republic-Central America-United States, Dominican Republic, Singapore, The European Union, European Free Trade Association.
Internet service providers in copyright infringement cases\textsuperscript{311}; the ratification of the UPOV Convention, the Trademark Law Treaty and the Budapest Treaty as well as the establishment of new enforcement mechanisms.\textsuperscript{312} Moreover, as a means to the implementation of commitments under the WTO TRIPS Agreement, Law 8039 on Enforcement Procedures for Intellectual Property Rights\textsuperscript{313} (Enforcement Law) was adopted in 2000.

Moreover, as a means to the implementation of commitments under the WTO TRIPS Agreement, Law 8039 on Enforcement Procedures for Intellectual Property Rights\textsuperscript{313} (Enforcement Law) was adopted in 2000.

242. Finally, Costa Rica is a party to the Patent Cooperation Treaty (PCT). This means that any applicant in Costa Rica seeking patent protection in several countries can file an “international” patent application with the Costa Rican Patent Office and \textit{vice versa} that an investor interested in filing an application in Costa Rica can do it via the PCT system. In Costa Rica, around 94\% of all patent applications in the period 2013-2014 were filed through the PCT system. Regarding trademarks, Costa Rica is not a party to the Madrid System\textsuperscript{314} which offers a trademark owner the possibility to have his/her trademark protected in several countries by filing one application directly with his/her own national trademark office. An eventual accession to the Madrid system, following the practices of countries in the region such as Colombia and Mexico, would simplify procedures for both Costa Rican importers and exporters.

\textit{Institutions involved in IP protection}

243. In addition to CIPPI, a few institutions worth noting from the perspective of an investor, are:

- The \textbf{Registry for Industrial Property} (Registro de Propiedad Industrial, RPI). The RPI is part of the Registro Nacional (National Register) and is in charge of the registration of patents, industrial designs, trademarks and other distinctive signs, and geographical indications. It conducts training, dissemination and capacity building activities with the public at large, but also with schools, universities and SMEs. In 2012, through a Cooperation Agreement with WIPO, the RPI established a centre for patents (Centre for Support of Technology and Innovation - Centro de Apoyo a la Tecnología y la Innovación, CATI), to guide interested parties on the patentability of an invention and to encourage innovation.\textsuperscript{315}

- The \textbf{Registry for Copyright and Related Rights} (Registro de Derechos de Autor y Derechos Conexos RDA). The RDA is responsible for copyright and related rights protection in the country\textsuperscript{316}, as well as for processing copyright applications and providing information on copyright and related rights. The RDA monitors the lawful use of works and other intellectual productions by users and is also responsible for granting or revoking operating licences of Collective Management Entities (CMOs). Since registration of copyrights is not mandatory, the RDA conducts awareness-raising activities to encourage registration of literary and artistic

\textsuperscript{311} Reglamento Sobre la Limitación a la Responsabilidad de los Proveedores de Servicios por Infracciones a Derechos de Autor y Conexos de Acuerdo con el Artículo 15.11.27 del Tratado de Libre Comercio República Dominicana-Centroamérica-Estados Unidos, Executive Decree No. 36880 of 18 October 2011. Rights holders complain, however, that Costa Rican law allows online service providers 45 days to forward infringement notices to subscribers.


\textsuperscript{313} Ley de Procedimientos de Observancia de los Derechos de Propiedad Intelectual

\textsuperscript{314} The Madrid Treaty was signed by not yet ratified by the Legislative Assembly

\textsuperscript{315} Public universities have projects to encourage patenting and development of innovative firms, for example the PROINNOVA and AUGE programs of the University of Costa Rica (UCR).

\textsuperscript{316} Under Costa Rica’s legislation, copyright is protected throughout the author's life and up to 70 years after his/her death by those who have lawfully acquired such a right. Law 6683 on Copyright and Related Rights, Title I, Chapter VIII establishes the terms of protection.
works as a judicial evidence of the ownership of the work, providing legal security and registration publicity. The main CMOs in Costa Rica are the Asociación de Compositores y Autores Musicales de Costa Rica (ACAM), the Asociación de Intérpretes y Ejecutantes Musicales de Costa Rica (AIE), and the Sociedad de Gestión Colectiva de Intérpretes y Productores de Fonogramas (FONOTICA). All three are set up in the traditional CMO model, where the society acts on behalf of members to negotiate rates and terms of use. ACAM represents 2689 national authors and 26252 national musical works. AIE has 450 national associates and has reciprocity agreements with other international CMOs. FONOTICA represents three major international music companies (Sony Music Entertainment, Universal Music Group and Warner Music Group) in Costa Rica, as well as other national producers. There are no data available to determine the efficiency of those CMOs in the eyes of their beneficiaries.

- **The National Seeds Office** (*Oficina Nacional de Semillas*), is responsible for registering plant varieties, as well as for seed certification and quality verification. The Office is responsible for keeping a record of seed exports and imports.

- **The Administrative Registration Tribunal** (Tribunal Registral Administrativo, TRA), established in 2002,\(^{317}\) is an independent,\(^{318}\) specialised body to adjudicate appeals relating to decisions and other actions taken by the country's national IP Registers. The TRA’s mission is to contribute, through its jurisprudence, to the consolidation of a “competitive intellectual property and registration system that promotes economic development”\(^{319}\). The Tribunal is attached to the Ministry of Justice and Peace. Five judges specialised in IP and appointed by the Ministry of Justice and Peace\(^{320}\) preside over cases. An online database provides access to the Tribunal's cumulated jurisprudence, as well as to news, specialised IP publications and reports.\(^{321}\) The Tribunal works closely with the national IP Registers to contribute towards a better understanding of the rules of the IP system; its decisions are binding on the Registers.

- **The Customs authority** (Direcccion General de Aduanas DGA), enforcement authorities and the judicial branch play an important role in enforcing the rights of the right holders and prosecuting infringements. As will be discussed below, the Economic Crimes Prosecution Office of the Public Ministry now specialises in the prosecution IP-related crimes.

- **The Costa Rican Academy of Intellectual Property** (Academia Costarricense de Propiedad Intelectual, ACOPI), set up in April 2012 as an association of public and private entities that deal with IP,\(^{322}\) to support technical training needs of the public, private and academic sectors in

\(^{317}\) Article 19. Law 8039.

\(^{318}\) The Tribunal is “fully autonomous.. with its own budget and governance system, designed to ensure that its decisions are impartial”, viewed at: [http://www.tra.go.cr](http://www.tra.go.cr)

\(^{319}\) [http://www.tra.go.cr](http://www.tra.go.cr)

\(^{320}\) On the basis of recommendations by the Administrative Board of the National Registry for three of them. The appointment of the five judges is ratified by Congress.

\(^{321}\) [http://www.tra.go.cr](http://www.tra.go.cr)

\(^{322}\) Judicial School, the Costa Rican Technological Institute, the University of Costa Rica, the National Pharmaceutical Industry Association, the Lawyers Professional Association, the Association of Intellectual Property Professionals, INCAE Business School, the National Register, the Chamber of Information Technology and Communication, the Ministry of Science, Technology and Telecommunications, the Administrative Tribunal Register, the US Chamber of Commerce, the Costa Rican Chamber of Commerce, the Council for the Promotion of Competitiveness, the Carlos III University of Madrid and the Ministry of Justice.
IP related subjects and to raise public awareness about the importance of protecting IP as a fundamental tool for the competitiveness of the productive sector. It is led by the Administrative Board of the National Register. ACOPI carries out an annual training plan in order to maximise resources and avoid duplication of efforts among members and publishes a Digital Newsletter twice a year, to inform on relevant and current issues related to IP.\(^{323}\)

244. In addition, these institutions are central in the effort to promote a culture of respect and protection of IPRs, in particular to advocacy and awareness-raising actions. On the one hand, these efforts are directed to the public at large through an extensive campaign against piracy, including the publication by the RPI and the RDA of a series of booklets on IP (Fascículos de Propiedad Industrial)\(^{324}\), as well as regular capacity building activities, television campaigns, meetings with authors, students and younger children. On the other hand, initiatives have been implemented to target specific groups. By way of example, the RPI has a number of coordinated initiatives with PROCOMER to raise awareness among producers all over the country regarding different aspects of IP rights (for instance the protection of a product through a trademark), as well as with MEIC for SMEs.

245. In terms of education opportunities on IP matters, there is a master’s degree in Intellectual Property taught by the UNED (Universidad Estatal a Distancia) since 2004, while several efforts have been made by the UCR (University of Costa Rica) to promote online courses on intellectual property for its students, teachers and administrative staff. Additionally, most law schools\(^{325}\) in Costa Rica include IP rights as a subject in their undergraduate or graduate level courses. Finally, a specialised entity, the Technology and Support Center (Centro de Apoyo a la Tecnología e Innovación -CATI-) caters to inventors, small and medium enterprises (SMEs) and other business representatives, researchers of technological centers and universities, academics and other professionals in the intellectual property field. The main objectives of CATI, as well as of similar regional entities established around the country, are to encourage innovation processes, register new products and procedures and promote the technological development in Costa Rica.

246. Overall, the ENPI sets a clear and coherent framework for reinforcing intellectual property use and protection and harnessing it to the broader development and economic growth agenda of the country. It has allowed identifying the main challenges for improvement and its strategic objectives are among the priorities of the current administration. The structure put in place through the CIPPI also seems to yield positive results as it has facilitated coordination among participant government agencies and opened a communication channel between these agencies and other relevant actors. How these relatively recent endeavors may translate into concrete results in terms of better enforcement and wider use remains to be seen.

Processes in practice.

247. Besides the legal basis for IP protection in the country, it is the efficiency of the associated processes -including registration and enforcement- that is instrumental for the private sector’s view of the level of IP protection in a country. Here we assess both in turn.

\(^{323}\) http://issuu.com/boletinacopi/docs/bolet__n_digital_academia_1
http://issuu.com/boletinacopi/docs/bolet__n_digital_academia_2

\(^{324}\) In the course of 2013, seven booklets on the promotion and enhancement of IP protection were published in La Nación (one of Costa Rica’s main newspapers). Such publications presented easy-to-read and concise information on the types and forms of protection of IPRs. These booklets are available at: http://www.rnpdigital.com/propiedad_industrial/index.htm

\(^{325}\) Universidad de Libre Derecho, Universidad Latina, Universidad La Salle Costa Rica, Universidad de Costa Rica, among others.
Registration process

248. Costa Rica recorded significant progress with respect to registrations, in particular in the field of patents, although agricultural chemicals have not been registered in several years. In the early 2000s, there was a very significant backlog in the review of applications due to the limited number of resources available (the patent office had 3 officials and no examiners among its staff to conduct the substantive analysis based on the merits of the application). Costa Rica’s commitments under the PCT and its FTAs, together with pressure from the private sector to adapt to the needs of an outward-oriented economy have finally led to the decision by the National Registry’s Managing Board to increase resources available internally and to rely on additional expertise externally, in the form of independent consultant examiners who provide technical reports to the IP Registry. In 2011, the RPI has enlarged the list of external examiners through a competencies-based selection process,326 so as to be able to currently rely on 25 external examiners, in addition to the 15 officials available among the Patent Office staff.327 The experience with external examiners has been quite satisfactory to date. For the past five years, there has been a constant improvement in the RPI’s capacities to process patent applications. In 2015, the IPR approved 128 patents; this represents a 13% increase in the approval rate as compared to 2014. The length of the application and registration processes is of three years on average.

249. The transformation of the Patent Office in the past decade to increase capacity has allowed a more efficient processing of applications since 2011. At the end of 2014, the RPI had dealt with applications filed in 2010 and aimed to reduce the average pendency period, which it considers to be within the ranges of other patent offices (from Chile, Mexico or the European Union). From an annual approval rate of 18-20 patents in 2001, the Patent Office moved to 36 in 2010, 106 in 2013 and 113 in 2014. It is expected that the workload will not vary significantly as compared to the year 2014, when 660 patent applications were filed. Nevertheless, the RPI would benefit from more resources to hire internal examiners, the limited number of which still hinders the swift processing of applications. For the time being the number of examiners will remain unchanged, due to budgetary restrictions in the government.

250. The average waiting period for trademarks is 3 to 4 months (including the 2 month period for opposition provided for in the Law 7978). In general terms, the process seems to operate smoothly and without backlog. (Tables 10 and 11 below).

251. The Registries also benefit from a well-functioning infrastructure as well as modern equipment. They have received training from WIPO for the adequate implementation of standards and have adjusted internal procedures to comply with them.

Table 10. Registrations in the Patent Office, 2010-2014

<table>
<thead>
<tr>
<th></th>
<th>Total of Registrations</th>
<th>Patents</th>
<th>Utility Models</th>
<th>Industrial Designs</th>
</tr>
</thead>
<tbody>
<tr>
<td>2010</td>
<td>124</td>
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<td>2011</td>
<td>140</td>
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<td>101</td>
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<td>2012</td>
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<td>204</td>
<td>106</td>
<td>12</td>
<td>86</td>
</tr>
<tr>
<td>2014</td>
<td>181</td>
<td>113</td>
<td>3</td>
<td>65</td>
</tr>
</tbody>
</table>

326 For instance in the area of mechanics, since the RPI does not have a specialised internal reviewer.

327 The Patent Office has six lawyers, five specialised examiners (three in the field of pharmacy, since this area is the largest patent applicant accounting for 70% of total applications; one in chemistry and one in industrial engineering).
In 2014, the RDA handled 409 copyright applications as compared to 375 in 2013. Applications are mainly submitted by Costa Rican nationals (90%). More recently, as the guarantor of copyright protection, the RDA has been entrusted with the responsibility to monitor compliance with the “Software Decree”, which requires the central government to prevent and combat illegal use of computer programs, aiming, among others, to address concerns expressed by Costa Rica’s trading partners over the use of unlicensed software by public entities. The Decree, binding on 22 ministries and 22 other institutions, imposes the obligation to use licensed software and submit several reports to the RDA on a yearly basis, containing among others a plan of action, the level of compliance, and corrective actions and is one of the main priorities of RDA. The RDA reviews those reports, conducts random audits on concerned institutions, and reports on institutions allegedly in violation with the Decree. RDA’s reports, together with the reports of each institution, are transmitted to the Ministry of Justice and Peace and subsequently to the Presidency of the Republic. Some trading partners noted that Costa Rica announced a plan to ensure the use of licensed software in 2010, but that a series of postponements have followed. Although the RDA has faced resource constraints to fulfill this task, it has gradually increased the resources dedicated to supporting the work of the different ministries and institutions. In parallel, the RDA has conducted several training sessions, and provided related institutional support, to explain the importance of respect to copyrights to government officials. As part of this effort, it replied successfully to 123 inquiries during 2015.

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<th>Year</th>
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<td>2014</td>
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328 Regulation 37549 to Protect Software Programmes in the Ministries and Agencies of the Central Government (Reglamento para la Protección de los Programas de Cómputo en los Ministerios e Instituciones Adscritas al Gobierno Central). The Regulation aims at ensuring full compliance with the provisions of the Copyrights and Related Rights Law, the Law on the Enforcement of Intellectual Property Rights and applicable international regulations.

329 Most institutions have submitted the reports for the years 2013 and 2014. The RDA will start auditing once all reports have been submitted.

330 2015 Special 301 Report.
253. The National Seed Office, created in December 1978 by Law 6289, is a semi-autonomous institution under the Ministry of Agriculture, enjoying independence in its operations and the status of a separate juridical person for administrative purposes. After the adoption of the International Convention for the Protection of New Plant Varieties, it became the competent authority to receive, process and decide upon applications for protection of new plant varieties.

254. Overall, Costa Rica has improved the efficiency of registration processes through the allocation of more resources, as well as through extensive cooperation with WIPO. The challenge today is not to lose this positive trend in the context of the current budgetary restrictions.

Enforcement

255. Finally, Costa Rica took initiatives to address the challenges it was facing regarding the enforcement of IPRs, in particular in terms of copyright piracy and trademark counterfeiting. The problem of enforcement and in particular the low level of effort and lack of metrics for prosecutions of IPR crimes; challenges with the electronic Trademark database; and the need for customs to create a recordal system and fully use ex officio authority were raised in USTR’s 2015 Special 301 Report and acknowledged by the ENPI, which resolved to build up enforcement capacity. As of April 2014, the Economic Crimes Prosecution Office specialised in the prosecution of IP-related infringements. This Office, based in San José, employs 10 prosecutors with expertise in IP-related matters.

256. Since its creation in 2014 and by 31 December 2015, 122 cases have been filed before the Economic Crimes Prosecution Office; 41 of them have been processed: 4 resulted in accusations, 33 were dismissed, 2 were returned to other prosecution offices for procedural reasons and 2 were terminated because no further criminal action could be pursued against them. Several cases concerned the importation, sale and distribution of counterfeit goods and one case the production and sale of unauthorized phonograms. Among the four cases which led to accusations, three are currently awaiting for trial, while in the remaining case, the parties signed a conciliation agreement. While local prosecutors maintain competence with respect to IPR infringements, the Deputy Prosecutors’ Office is working towards the centralisation of the prosecution function in San Jose, with a view to improving the effectiveness and efficiency of prosecutions. In addition, the Deputy Prosecutor issued in January 2015 a memorandum for prosecutors, explaining the procedural steps to be followed in the handling of IPR infringements. The Office coordinates work on IPR violations and counterfeit products with the Ministry of Health and participates in the National Commission against Counterfeit and Illicit Products of Sanitary Interest.

257. Finally, the Office started to process statistics on IPR-related cases that would contribute to a better understanding of the situation and provide the basis for any corrective actions that may be required in the future. In particular, the Office centered its efforts on determining the type of IPRs involved, as well as the primary reasons that delay the criminal prosecution of the cases under their jurisdiction. It has for instance determined that the main reasons for delays in the processing of the remaining 81 cases are related to the failure of interested parties (the rights holder or his representative) to provide an expert opinion on whether the products are false or not, and to omissions by the plaintiff’s legal representation. It points to the need for better collaboration from private parties in order to expedite proceedings held by the Economic Crimes Prosecution Office. Although it is too early for assessing the impact of the Office’s actions on the efficiency of IP enforcement, they represent positive steps towards addressing Costa Rica’s IP enforcement challenges.


332 Including legal representatives’ lack of powers of attorney, translations or proof of ownership, or evidence of the expert’s suitability.
258. Costa Rican authorities have also adopted *ex-officio* border measures regarding counterfeiting and piracy. However, given the fact that in Costa Rica, criminal procedures related to IPR infringements rely on private action, *ex-officio* action is only possible with regard to the collection of evidence and prevention of criminal activity. In practical terms, in many cases right holders do not pursue their action and therefore the (*ex-officio*) confiscated goods remain under custody indefinitely. This has led enforcement authorities to actively seek to motivate trademark owners into playing a more active role, assisting public authorities in the prosecution processes and submitting cases to the Economic Crimes Prosecution Office. For instance, the Prosecution Office regularly organises meetings with the private sector in order to promote their participation when complaints are raised or an *ex-officio* measure is taken in Customs. Costa Rica may also wish to consider creating a formal Customs recordal system for trademarks to give Customs officers the technical and contact information they need to make full use of their *ex-officio* authority.

259. The Deputy Prosecutor’s Office has worked with the Customs authorities (SNA) to elaborate General Guidelines under the Enforcement Law, aimed at standardising the procedure followed by Customs to ensure an adequate and effective protection of IPRs in the application of border measures for incoming merchandise. The guidelines are meant to allow for a better implementation of the requirements set forth by Law 8039 on *Procedures for Enforcement of IPRs*, by supporting *ex officio* actions and establishing compulsory actions for all customs officials. The guidelines describe the necessary procedures for Customs authorities to file a case before the Prosecutor’s Office when they encounter a shipment with goods suspected to be counterfeit, and provides instructions for an effective application of border measures. Regarding goods in transit, the Guidelines provide for the obligation to send a warning to the country of destination concerning potential cases of piracy or counterfeiting. The implementation of the Guidelines allowed Customs authorities to carry out in 2015 several *ex-officio* border measures that resulted in twenty two claims filed before the Prosecutor’s Office. Additionally, Costa Rican authorities issued six international alerts regarding shipments suspected of containing illegal merchandise that were heading to other countries.

260. Furthermore, in mid-2014, a review of the IP-related aspect of the customs legislation was initiated with the support of WCO. The Costa Rican Customs actively participate in domestic and international operations against counterfeit goods and coordinate capacity building activities, such as workshops on counterfeit and piracy in two important customs offices (Limón and Peñas Blancas). “Operation Maya II”, organized by INTERPOL for the second time in Costa Rica in 2015, allowed authorities to receive training on how to identify shipments suspected of containing illegal goods; create proper channels to share information and intelligence about unlawful activities among national and regional agencies; as well as to design a plan to hinder said activities. Costa Rica also subscribed to the Interface Public-Members (IPM) database of the WCO, which contains information about trademarks worldwide and serves as a useful tool for customs authorities to identify counterfeit and illegal merchandise.

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334. The US Embassy in Costa Rica often organises workshops and capacity building on IP-related matters. Furthermore, Customs authorities participate in operations involving a number of governments worldwide as well as in workshops that address counterfeit detection.

335. Such as the PANGEA VII Operation in 2014, meant to fight the sale of counterfeit and illicit medicines, with emphasis on online sales, in coordination with several international organisations, including INTERPOL and the World Customs Organization (WCO); or the MAYA II Operation in 2015, meant to verify the efficiency of income level controls, which helped identify and dismantle an entire criminal network selling counterfeit goods, specifically masks and air filters.
261. The municipal police also has the capacity to seize pirated and counterfeit goods sold on the streets. From 2010 to January 2014, approximately 850,000 CDs were seized and destroyed. Seizures also include unlabeled cigarettes, homemade alcohol, and clothes. In some cases the Ministry of Health intervenes where public health is at risk.

262. Overall, Costa Rica has taken several steps in the right direction to reinforce IP protection. These include an ambitious IPR protection strategy in keeping with the country’s broader policy agenda for development and economic growth, a generally modern legal framework and a coordination mechanism for its implementation. Recently, it has taken steps to address the major remaining challenge of effective and efficient enforcement. Sustained efforts in this direction are key for the longer term objectives of greater IP use of and IP generation in the country.

4. Compliance

263. The degree of compliance with international rules on trade and investment is an important aspect of the predictability of a country’s trade policy as it provides an insight into the country’s willingness to honour its commitments. In order to assess the degree of compliance, the OECD market openness reviews focus on specific mechanisms in place that ensure the country’s legal framework is in line with the obligations it undertook (e.g. the existence of review mechanisms) and on the record to-date in commercial disputes, most notably under the WTO Dispute Settlement Mechanism (DSM).

264. In Costa Rica’s case, based on Law No. 8056 the Ministry of Foreign Trade (COMEX) is the entity responsible for verifying compliance with all the obligations derived from international trade and investment agreements and other legal instruments adopted by the country in these two areas. In order to fulfil its role, COMEX has the power, acting on its own initiative or in response to a complaint, to summon other government institutions to work together with a view to finding a solution. As described in Section 2, COMEX has set up a number of mechanisms that include, among others, a daily monitoring of draft laws and regulations, inter-institutional working groups and an internal “alert system” concerning regular upcoming commitments. COMEX also has the power to participate in consultations and make recommendations on proposed technical regulations. Regarding planned tariff changes, which are defined in the context of the Central American economic integration (as explained in Section 1), COMEX represents Costa Rica in COMIECO’s Tariff Policy Committee and ensures that the changes requested to COMIECO are made in compliance with its commitments under regional agreements as well as within the WTO bound tariff rate.

265. The mechanisms put in place by Costa Rica seem to have been successful in avoiding trade frictions. In general, Costa Rica’s trading partners are satisfied with the country’s responsiveness to their concerns and willingness to engage in dialogue. Nonetheless, some trading partners have expressed concerns on agricultural issues (see above under Section 2.4). No disputes have been brought to the WTO against


337 In the context of regional tariff harmonisation, in the period between 2006 and 2015, Costa Rica has modified 121 tariff lines. As a consequence of this harmonisation, Costa Rica has either maintained or reduced its domestic applied tariffs in 108 tariff lines. In the remaining 13 tariff lines, it has increased its tariffs within the WTO bound rate; imports under 4 out of those 13 tariff lines (6406.20.00, 8414.51.00, 8414.90.19, 9307.00.00) accounted for 0.075% of total imports in 2013.

338 Some trading partners also complained that agricultural import permits were denied based on quantity requested, particularly if the product is covered by a tariff-rate quota, even though the importer is willing to pay the MFN tariff rate; and about burdensome questionnaires required for the importation of dairy products.
Costa Rica. To date, Costa Rica has participated in five WTO dispute settlement cases as a complainant and in fifteen cases as a third party. Among the main issues raised by Members in the context of other WTO bodies, reference can be made to Costa Rica’s “Amber Box” domestic support commitments and to its industrial subsidies regime (“Duty-Free Zone Regime” and the “Inward Processing Regime”).

266. Concerning the “Amber Box” domestic support commitments, since 2007 Costa Rica’s rice price support mechanism exceeded the country’s commitment on the “Aggregate Measurement of Support” (AMS) under the WTO Agreement on Agriculture. Based on the most recent notification submitted by Costa Rica to the WTO Committee on Agriculture, its current total AMS for 2014 was USD 76.31 million, exceeding almost five times its initial commitments of USD 15.94 million. It should be noted, however, that the AMS for 2014 decreased as compared to the previous year (USD 86.13 million). Furthermore, as part of a verification of origin procedure under the Dominican Republic - Central America - United States (DR-CAFTA) Free Trade Agreement initiated in 2013, Costa Rica requests information on the origin of rice shipments, including field maps, production practices, seed suppliers and ownership of land, which are felt to be more restrictive than necessary by the country’s trading partners. In particular, concerns were expressed about a possible protectionist intent of the investigation, as Costa Rica has not provided information on the status of the investigation or clarification of the DR-CAFTA country of origin article they are basing their investigation on.

267. The issue of domestic support commitments was first discussed in the WTO Committee on Agriculture in 2009. Ever since, Costa Rica has shared information with Members on steps taken to address the issue, as well as on the difficulties encountered at the domestic level to introduce changes to the current system. In June 2013, the Costa Rican delegation to the WTO had announced that the current scheme would be replaced in March 2014. Later on, a delay of a year (until March 2015), was reported by Costa Rica, based on the needs of the rice sector to adjust to the new policy. At the end of February 2015, Costa Rica issued a decree aimed at eliminating the price support scheme mentioned above through a process of “gradual (price) deregulation”. In May 2015, the Costa Rican delegation confirmed to WTO members that it had replaced its minimum purchase price system for rice with a reference price “with the effect that it would now bring its trade-distorting support within its WTO spending ceiling”. The reference price is meant to serve as a baseline for the negotiations of a contractual price between rice producers and processors, allowing both parties to have a starting point when negotiating a final price, based on their own marketing conditions (place of delivery, payment and quality of the grain). However, the February 2015 decree fixed the price of rice at USD 557/ton, while, at current production, the price would need to be USD 295/ton for Costa Rica to meet its AMS de minimis commitment.

268. Costa Rican authorities point to the fact that the National Development Plan for the Agricultural and Rural Sectors adopted in January 2015 will support rice producers in this adjustment phase. The plan identifies actions aimed at fostering productivity levels, based on training, technological research and innovation, more efficient use of water resources and irrigation areas and more adequate water and sewage

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339 Document G/AG/N/CRI/51 submitted on 27 May 2015
340 G/AG/GEN/110 of 31 May 2013. “The Government of Costa Rica hereby advises that the price support mechanism for rice will be eliminated as of 1 March 2014 pursuant to Executive Decree No. 37699-MEIC, published in Official Journal La Gaceta on 20 May 2013. Attached to this communication is Executive Decree No. 37699-MEIC (in Spanish only).”
341 Executive Decree N° 38884-MEIC, published on 27 February 2015.
342 Costa Rican intervention at the meeting of the WTO Committee on Agriculture, G/AG/GEN/126 and https://www.wto.org/english/news_e/news15_e/agcom_04jun15_e.htm
infrastructure, among other aspects. The Ministers of Agriculture (MAG) and of Economy, Industry and Commerce (MEIC) have indicated that the Plan aims at increasing the productivity of rice producers by at least 40% by 2018.

On subsidies schemes, in June 2013, pursuant to Article XVI:1 of the GATT 1994 and Article 25 of the Agreement on Subsidies and Countervailing Measures (ASCM), Costa Rica submitted a new and full notification regarding the “Duty-Free Zone Regime” and the “Inward Processing Regime”, which have been granted extensions under Article 27.4 of the ASCM. On that occasion, Costa Rica notified amendments introduced to the “Duty-Free Zone Regime” aimed at eliminating the link between incentives and export (among other features) and provided an action plan for the elimination of the benefits as designed under both schemes (by the end of 2015). Costa Rican authorities are currently working in the reform to the “Inward Processing Regime” to comply with WTO commitments. The reform aims at eliminating aspects which are subsidies under the ASCM, notably the suspension of all types of taxes on the imports of machinery and equipment as well as on all goods that are not incorporated into the exported product. Costa Rican authorities expect to have a final version of the proposed amendment in the next few months.

Costa Rica is not a frequent user of trade defence measures (i.e. anti-dumping, countervailing and safeguard investigations). It has, for instance only one definitive anti-dumping measure in force (as of 30 June 2014), notified in its semi-annual report to the Committee on Antidumping. The measure concerned water-based latex paint from the United States entering Costa Rica under SAC (Central American Tariff System) tariff subheading 3209.90.10.00. The measure has been extended for five years, from 1 February 2011 to 31 January 2016. Costa Rica has never applied a countervailing measure. In 2003, Costa Rica initiated a subsidies investigation regarding palm olein and margarine for puff pastry from Colombia. In May 2004, the Colombian Government undertook to fully eliminate the subsidy. In May 2009, such undertaking expired without review from Costa Rica.

On 19 January 2015, Costa Rica has also notified to the Committee on Safeguards a definitive safeguard measure on pounded rice (tariff lines 1006.30.90.91 and 1006.30.90.99 according to the Central American Harmonised System (SAC)349. That notification was amended afterwards to reflect a revision of the investigating authority regarding the safeguard measure level. The final measure is described as a “Definitive safeguard measure consisting of an additional 24.88% on the existing tariff level of 35% of the Import Customs Duty (DAI), bringing the total to 59.88% on the CIF value of all imports of pounded rice, of whatever origin, imported into Costa Rica under tariff subheadings 1006.30.90.91 and 1006.30.91.99”. The measure entered into force on 19 February 2015, with duration of four years. A progressive liberalisation schedule is contained in the notification.

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344 http://www.nacion.com/opinion/foros/Razonable-decision-arroz_0_1465253467.html
345 G/SCM/N/253/CRI. G/SCM/N/260/CRI.
346 In the preparation of the draft amendment, consultations were conducted with the private sector. A Joint Working Group (with the participation of the Ministries of Finance and of Foreign Trade and PROCOMER) has been set up for the review of the draft amendment.
347 G/ADP/N/259/CRI.
348 G/SCI/N/203/CRI.
349 G/SG/N/8/CRI/1 G/SG/N/10/CRI/1 G/SG/N/11/CRI/1
272. Similar to the multilateral trade arena, Costa Rica has a good compliance record under its FTAs. The country has never been a defendant in this context. Costa Rica has participated as a complainant in two cases, which deal with breaches within the Free Trade Agreement between the Dominican Republic, Central America and the United States (DR-CAFTA). The first case is related to the non-application by El Salvador of the tariff elimination schedule established in DR-CAFTA to originating goods from Costa Rica, including goods produced under special export regimes. Following the procedures of Chapter 20 (Dispute Settlement) of DR-CAFTA, in 2014 both Parties exchanged written submissions and held an oral hearing. In November, the Arbitration Panel issued its final resolution, which declared that El Salvador had breached CAFTA-DR by not applying the preferential tariff treatment under the agreement to originating goods from Costa Rica.

273. The second case is related to actions taken by the United States that resulted in the elimination of Costa Rica’s preferential tariff-rate quotas for fuel-grade dehydrated ethanol importations into the United States, set forth in Annex 3.3 of the Agreement. Costa Rica argues that the measure taken by the United States is not in accordance with Chapter 3, Annex 3.3, Appendix I, U.S. Note 12 (Annex 3.3), and Annex 4.1, Part II, Section III (Specific Rules of Origin – Heading 22.07), or with the United States’ obligations under Article 20.2 (Scope of Application), and Annex 20.2 (Nullification or Impairment) of the Agreement. The second stage of the dispute settlement procedure involved a meeting of the Free Trade Commission (integrated by Costa Rica and the United States). The Parties are still discussing on this matter in order to find a positive and constructive solution.

5. Conclusions and policy options

274. Open trade and investment policies have been an important part of Costa Rica’s social and economic transformation since the 1980s. The country’s outward-oriented strategy of FDI attractiveness and export-led growth has helped modernise its economy and improve the overall business climate. This review highlights Costa Rica’s progress in removing a number of non-tariff barriers to trade and developing a more trade and investment friendly regulatory framework, but also draws attention to a number of challenges that would need to be addressed in order to ensure that the economy can reap the benefits of globalised markets. The overall transparency of the regulatory environment is commendable, but significant efforts are necessary in order to bring the framework for government procurement to the same level of clarity and predictability. The policy framework is generally non-discriminatory, with some restrictions on foreign entry or barriers to completion in services sectors. Improvement of the overall business climate and trade facilitation have been important reform targets in recent years, although further administrative simplification and infrastructure enhancement efforts could bring additional benefits to the economy. Momentum in favour of internationally harmonised measures and streamlined conformity assessment procedures has clearly supported the competitiveness of the country’s companies, products and services. Finally, steps undertaken in the area of IP protection have been in the right direction and will now need to focus more on improved enforcement and institutional capacity building.

General assessment and main challenges

275. Overall, businesses and trading partners acknowledge the efforts made by the Costa Rican government to achieve a high level of transparency and access to information, to publish draft laws and regulations in advance and to seek inputs from interested stakeholders. Costa Rica has adhered to international initiatives to increase transparency and fight against corruption and has developed an institutional framework for their implementation. Ongoing reforms to link public consultations to the existing cost-benefits analysis mechanisms, as well as possible additional steps to systematise the public consultation process for draft regulations and ensure that the commenting period is sufficiently long should greatly reinforce the efficiency and accountability of the process and increase regulatory predictability.
In contrast to this general trend, the lack of transparency and the complexity and fragmentation in the area of government procurement has been a major concern of both Costa Rica’s private sector and academia as well as of some of its trading partners. Following failed past attempts to set a single procurement platform, Costa Rica introduced in early 2015 an Integrated System of Government Procurement (SICOP), which should, if successful, gradually streamline procurement by the various government entities and increase the transparency and predictability of government procurement in the country.

**Policy Options**

- Promote the incorporation of new entities to the Inter-institutional Transparency Network (Red interinstitucional de Transparencia), in support of Costa Rica’s nationwide objectives to ensure access to public information and fight against corruption.

- Maximise the benefits of existing information tools, in particular the CNT and e-regulations by integrating them into a single information system. The presentation of the comprehensive information on administrative procedures, available under the CNT, in the step-by-step manner offered by the less inclusive e-regulations platform would guide users on both the substance and the procedural steps of each and every administrative requirement.

- Uphold the relevance of SINALEVI as the reference tool for information regarding Costa Rica’s legal framework by regular maintenance to swiftly address technical difficulties.

- Structure public consultations on draft regulations through explicit rules on advance publication and mandatory public consultations. A more standardised consultation process, providing sufficient reaction time to stakeholders, as opposed to the current discretionary practice, would further promote stakeholder confidence and involvement in the reform process.

- Continue publicising the governments’ forwarding planning in the form of Annual Plans of Regulatory Improvement and related dialogue undertaken by the concerned government entities.

- Pursue the reform of Regulation 37045 aiming to allow citizens access to the results of the cost-benefit analysis of draft regulations and the possibility to submit comments, so as to ensure an early and informed stakeholder involvement in the regulatory process.

- Develop a centralised database with all relevant information concerning the government procurement regime (general rules, special regimes, free trade agreements and domestic preferences), as well as comprehensive statistics of the procurement conducted by all entities. Making information available in one place would go in line with the overall government policy priority to increase transparency and help potential bidders identify appropriate market opportunities.

- Pursue the implementation of SICOP by central government agencies in accordance with the timeline set by the Contraloria. Sustain DGABCA’s advocacy efforts so as to gradually incorporate the rest of the procuring agencies in the single platform and provide it with the appropriate political support.

- Improve the clarity in the bidding documents so as to reduce the opportunities for controversies and procedural delays. Put in place, as envisaged, targeted training activities for officials in charge of elaborating bidding documents. Provide supporting checklists along the lines of the Guides available for technical regulations or RIAs, to help officials check that basic legal,
financial, social, or environmental conditions have been met before the publication of the bidding document.

277. The non-discrimination principle is generally applied in Costa Rica’s overall regulatory, trade and investment framework, and there are rather limited national treatment exceptions, other than in the area of services trade. Costa Rica’s score on the OECD Services Trade Restrictiveness Index (STRI) in the telecommunications and commercial banking sectors reveals a regulatory regime that is more restrictive than the OECD average, signaling the need to further pursue reforms to improve the country’s competitiveness. Furthermore, Costa Rica’s membership to the WTO Agreement Government Procurement Agreement (GPA) could in the long run bring more clarity to the procurement system’s applicable preferential schemes and provide market access opportunities to a wider group of potential suppliers.

Policy Options

- In services sectors, the Government could consider focusing its attention on weaker points identified under the Services Trade Restrictiveness Index and in particular to barriers to competition in the telecommunications sector.

- Develop statistics on the use of various preference schemes in order to quantify their value and their potential impact on competitiveness. Further consider the accession to the WTO Government Procurement Agreement (GPA) as a means to open access to new bidders and bring more clarity and efficiency in the procurement area.

- Review alleged cases of discrimination to ensure the principle of national treatment is not compromised in practice.

--- In particular, the current 10% tax imposed on imported beer may need to be revised in order to ensure imported beer can access the market on equal terms.

278. In the area of least trade restrictiveness, Costa Rica has made significant advances in improving its overall business climate. Mechanisms to assess the impact of domestic regulations on the economy and to coordinate government efforts in streamlining procedures have allowed improving the quality of new regulations. Efforts to simplify and automate formalities start bearing fruit, although the burden of bureaucracy is still considered an important hurdle by the private sector. Measures to modernise and streamline the border process can greatly facilitate trade and enhance the competitiveness of the economy, provided that the supporting transport, port and border crossing infrastructure also evolved in the same direction. The latter is an area in which Costa Rica scores consistently poorly in various international rankings, together with the country’s energy production approach, which contributes in energy prices burdening the domestic productive process.

Policy Options

- Continue the efforts to improve the business climate in the country, including through efforts to facilitate the ease of starting and doing business. Particular attention should continue to be paid to streamlining procedures for SMEs, as well as to other initiatives promoting entrepreneurship (e.g. the use of digital platforms, the work to reduce formalities and promote quality, etc.).

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The calculation of the STRI for Costa Rica is still work in progress and the report’s assessment in this area is preliminary.
• Pursue efforts to streamline registrations and permits through further development and reinforcement of existing digital platforms, such as Registrelo, the APC, or VUCE, and the creation of new platforms that could help expedite applicable formalities, such as SETENA’s environmental permits. Facilitate the registration or permit process by providing the veterinary, sanitary or environmental protection agencies (SENASA, SFE, SETENA) with adequate resources, standardisation of application requirements and procedures, and the possibility to secure the cooperation and prompt response of other involved agencies.

• Pursue the systematic ex-ante analysis of the impact of regulations and finalise the ongoing reform which aims to broaden the consideration of non-regulatory alternatives, submit the results of cost-benefits analysis to public consultation, and reinforce the obligation of decentralised entities to conduct cost-benefit analysis.

• Pursue further administrative simplification efforts, on the basis of the Annual Plans for Regulatory Improvement, ensuring that high-impact formalities are targeted first, and focusing on improving the quality of the underlying regulations. Maintain the relevance of the coordination mechanisms advocating simplification and least trade restrictiveness, such as the Commission on Regulatory Improvement or the Foreign Trade Advisory Council.

• Take advantage of the opportunity offered by the National Dialogue on electricity to promote comprehensive solutions for enhanced competition and improved competitiveness in the area of energy.

• In the area of trade facilitation, the Government should, in particular:
  – Expedite plans to accede to the WCO Revised Kyoto Convention (RKC). Consider undertaking a Time Release Study (TRS), covering performance of both public and private operators, to identify the key bottlenecks preventing faster release of goods and the responsible actors; the results of such a study should be made available to the public to increase awareness and incentivise improvements. The WCO’s TRS Guide can be a useful starting point.
  – Continue efforts to reinforce the fight against illicit trade
  – Improve the accessibility of information to users by setting up a Customs enquiry point and consider providing some basic information on the Customs website in English.
  – Promote the use of advance ruling mechanisms among potential users by means of information and training campaigns; allow for advance ruling requests to be made online on dedicated pages in the Customs website.
  – Pursue the establishment of digital connections to expand the integration of the customs system (TICA) with the single window for foreign trade (VUCE) as regards imports.
  – Further develop risk management and ensure its generalised use for customs controls and clearance; undertake systematic collection and structuring of customs intelligence and reinforce post-clearance audits by automating them and incorporating them in the TICA system.
  – Complete the implementation of the new program for Authorized Economic Operators (PROFAC) according to its implementation schedule and envisage awareness campaigns to ensure PROFAC is properly understood by potential users. Pursue efforts to involve the Ministries of Health and Agriculture in PROFAC.
- Step up efforts to improve cooperation and coordination with border agencies in neighbouring countries to streamline and expedite the movement of goods across Costa Rica’s terrestrial borders.

- Consider ways to address the problem of underinvestment in infrastructure, and in particular in the country’s entry and exit points, such as border crossings and ports.

279. Costa Rica’s current institutional framework generally operates in favour of quality and of the use of internationally harmonised standards and technical regulations. The system offers the private sector ample opportunities for involvement, while including appropriate safeguards to avoid capture. It has consistently promoted measures to support the competitiveness of the country’s companies, products and services. Although the existing testing and certification capacity is limited, it still corresponds to the size and needs of the domestic market and productive sector and does not appear to restrain the potential of the economy to benefit from globalised markets.

**Policy Options**

- Pursue the practice of elaborating National Technical Regulations Plans in consultation with concerned regulatory bodies and the private sector in order to ensure the relevance of the technical regulation activity for the country’s productive process.

- Monitor existing laboratory capacity to ensure it continues meeting the needs of the productive sector; pay particular attention to sanitary and phytosanitary testing capacity at the local level.

- Promote industry awareness about the benefits of certification and ensure sufficient capacity is available to meet any increase in certification demands resulting from awareness campaigns.

280. Costa Rica has also put in place an efficient system to streamline conformity assessment procedures and reinforce accreditation. The participation of the Costa Rican accreditation agency to the main international accreditation networks and the signature of a series of Mutual Recognition Agreements are central in overcoming the cost implications of regulatory divergence for domestic and foreign business alike.

281. The last few years have seen the development in Costa Rica of an ambitious policy of intellectual property rights (IPR) protection as a means to attract foreign investors and foster innovation. This is reflected in the inclusion of advanced IP provisions in Costa Rica’s trade and investment agreements, ratification of a number of international IP treaties, improvement in the operation of IP-related institutions and the elaboration and implementation of a National Intellectual Property Strategy. However, despite progress made so far, challenges regarding enforcement of IPRs remain, in particular in terms of copyright piracy and trademark counterfeiting. Costa Rica has recently taken action to address factors hampering effective enforcement, such as delays in judicial proceedings and a lack of institutional enforcement capacity. The results of these efforts on greater IP use and IP generation in the economy remain to be seen.

**Policy Options**

- Continue advocacy and awareness-raising efforts on the importance of respect and protection of IPRs as well as implementing targeted actions with specific groups to support the production of IP.

- Keep the level of progress made so far in terms of expediting registration. Provide the necessary resources to RDA in order to fulfil this task in support of the implementation of the “Software Decree”.

119
• Continue efforts in support of the Economic Crimes Prosecution Office in San Jose and support the development of statistics on IPR-related cases that would contribute to a better understanding of the situation and provide the basis for any corrective actions that may be required in the future.

• An eventual accession to the Madrid system, following the practices of countries in the region such as Colombia and Mexico, would simplify procedures for both Costa Rican importers and exporters.

282. To-date Costa Rica displays a good record of compliance with international rulings on trade and investment matters. The mechanisms put in place seem to have been successful in avoiding trade frictions and Costa Rica’s trading partners are generally satisfied with the country’s responsiveness to their concerns and willingness to engage in dialogue. No disputes have been brought to the WTO against Costa Rica and one the main issues raised in the context of other WTO bodies concern its rice price support mechanism.

Policy Options

• Sustain efforts to bring domestic support to rice producers into conformity with its commitments under the WTO Agreement on Agriculture.

• Ensure that the implementation of the National Development Plan for the Agricultural and Rural Sectors brings Costa Rica closer to comply with its obligations under the WTO.
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ANNEX

An additional question was raised by the EU Delegation on the energy sector. The reply from Costa Rica is presented below.

In the energy sector, we understand that Costa Rica has looked to promote various legal reforms that aim to increase private sector participation in the electricity sector and further liberalization in the generation, transmission and distribution of electricity. So far, none has been actually approved and statistics show that in future the electricity demand will grow requiring greater investment in this sector that Government entities may not be able to fulfill themselves. In that context, do Costa Rican authorities still consider (as one of their priorities) making the necessary legal reforms in order to increase the participation of private investors in electrical generation sector? If so, what would the guiding lines of such changes be?

Reply from Costa Rica: Costa Rica’s national electrical system

The electrical model in Costa Rica has been a product of a long term planning, which has focused on the use of natural resources, universalization of the service and development in harmony with the environment. This process which began more than 60 years ago, has allowed the country to have, in terms of electric power, one of the highest renewable and quality service rates in the world. In the same way, this has allowed the country to reach an electrical coverage rate of 99.4% through which the population has access to high quality electrical service nationwide.

Current structure of Costa Rica’s electrical system

The current legislation assigns to the Instituto Costarricense de Electricidad (ICE) -Costa Rican Electricity Institute- the responsibility of satisfying electricity demand.

Nevertheless, ICE is not the only electricity generator. Electric energy comes from several sectors where the state, the private enterprise, municipal enterprises and solidary economies, represented by the rural electrification cooperatives, coexist. In sum, the electric generation consumed in the country comes from:

- ICE’s generation plants
- Generation plants hired from private parties
- Regional exchanges
- All independent plants generate electricity, owned by one of the eight distribution enterprises
- Generation for auto-consumption

Additionally, the country has a high-tension transmission system from ICE and SIEPAC (by its acronym in Spanish, Electrical Interconnection System for Central American Countries) line, property of the EPR (by its acronym in Spanish, company that owns the grid circuit). Likewise, there are eight distribution companies in charge of distributing and commercializing energy in medium and low tension, conformed by two municipalities, four rural electrification cooperatives and two state owned distributors.

Furthermore, there is a regional market formed by six Central American countries. In the case of Costa Rica, ICE is the only market agent that operates under the protocols of the Regional Electric Market and according to what is established by the Ministry of Environment and Energy (MINAE) in the energetic
and environmental policies and by the Regulatory Authority of Public Services (ARESEP), which regulates quality and price.

Current installed capacity

In order to meet the growing electricity demand, the country has incorporated the necessary infrastructure to supply the energy that the country requires, with the participation of several sectors. This capacity can be seen in the graph below, where the total system power at the end of 2014, reached 2885 MW.

The growth in installed capacity is done under economic, technical and environmental criteria within the framework of national and institutional policies on energy, in which the system is designed to not incur in energy shortages and anticipate annual growth of demand that can be product of the dynamics of economic growth, which directly affects the system requirement.

Currently, there is an extremely robust system to avoid running into energy risk. This is displayed in the data of maximum power demand in the graph below, in which, in the last five years the maximum annual demand does not exceed 58% of the total power installed if the analysis is carried out in a year to year basis, as recorded in the chart above on installed capacity.

This means that the electrical system that the country has, is designed to meet the independent demand of energy sources variations which because of being renewable are known to obey atmospheric conditions.
Growth in energy demand

Costa Rica, as other countries of the region, has experienced a slowdown in growth of demand. The following graph shows that the average growth of the last 5 years has been 1.3%, a situation that has forced the country to be extremely cautious in developing new power generation infrastructure to avoid over-installation conditions on the electrical system.

When analysing the following graph, which includes the country’s own generation, excluding regional exchanges, a contracted demand behaviour can be seen, which looms remain with similar characteristics in the short term.
Growth forecast of the generation system

Since one of the fundamental responsibilities of the state, regarding the electricity sector is to ensure a balance between supply and demand for electricity, an instrument is used to ensure adequate electricity supply in the coming years by performing regular plans to expand electricity generation. The current Expansion Plan of the Electricity Generation covers the 2014-2035 planning horizon, which includes those works in construction, which corresponds to long-term infrastructure development and includes decisions covering activities until 2019. Within this plan the Reventazon hydroelectric project of 305 MW stands out. This project will come into operation in 2016, plus a series of works that are being carried out by private companies and distribution companies.

The following table summarises the next ventures that will be developed in the country to meet the total electricity demand for the next six years. It is estimated that about 900 MW power will be added, enough to meet the demand and to not perform any changes in the electrical model, as the needs of development through projects established by contract and with a fully defined delivery date are totally covered.

<table>
<thead>
<tr>
<th>Short Term 2015-2020</th>
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<tbody>
<tr>
<td>ICE (Reventazón and geothermic)</td>
<td>355 MW</td>
</tr>
<tr>
<td>Modernizations ICE</td>
<td>75 MW</td>
</tr>
<tr>
<td>Private BOT</td>
<td>250 MW</td>
</tr>
<tr>
<td>Private Law 7200</td>
<td>137 MW</td>
</tr>
<tr>
<td>Distributors</td>
<td>80 MW</td>
</tr>
<tr>
<td>TOTAL</td>
<td>897 MW</td>
</tr>
</tbody>
</table>

Of all projects scheduled to come on stream in the next five years, about 400 MW are from private developers with renewable energy sources (hydro, wind and solar, in particular), as established by law for BOT projects and parallel private generation, under law 7508 and 7200, respectively.
Environmental aspects

While recognising the importance of environmental variables, apart from the technical and economic one, in the development of electrical infrastructure and especially in the rules governing development in this area, the government is aware that more rigorous standards and more effective tools need to be set in order to ensure total respect to environmental issues. This includes not only the biotic but also the social element that interacts in the process of studies, construction and operation of works for electricity generation, specially giving emphasis to private sector participation in the construction of electrical infrastructure.

Besides the previously mentioned aspect, where it is acknowledged that there is still weak regulation, it is also necessary to work in axes of great importance to improve the participation of private actors in the development of electric infrastructure, such as:

- Redefinition of flow compensation designs necessary in order not to affect ecosystems in river intervened for the construction of dams for hydroelectric plants.
- To increase the studies to determine the cumulative effects that hydroelectric generation produces in highly intervened watershed.
- To encourage the participation of the communities that could be affected by electrical infrastructure projects in the impact assessment and in the estimation of environmental remediation of impacts and also to establish the benefits from the implementation of such projects.
- To improve the institutional capacity to address environmental aspects of the energy sector: environmental regulations, National Environmental Technical Secretariat (SETENA) procedures, and the explanation of the recognizable environmental costs through electricity rates.

Reform

The Costa Rican government assigns significant priority to providing its population with access to high-quality, clean sources of energy. In accordance with the country’s National Action Plan for the 2015-2018 period (NAP), strategic actions aimed at supplying such services in a timely and efficient manner is an underlying pillar of its sustainable development policies. In order to guarantee these principles, the NAP grants the Ministry of Environment and Energy (MINAE) full authority as rector of the national energy sector. With the purpose of reorganizing Costa Rica’s energy matrix in order to fulfil the objective of ensuring an optimal and continuous supply and use, in the past months this institution carried out a broad consultations process and launched on September 15 a new National Energy Policy, that sets out the main policy orientations to be followed within this sector, in the 2015-2030 period.

A copy of this plan can be publicly consulted at http://www.minae.go.cr/recursos/2015/pdf/vii-PNE.pdf