CAFTA—is Central America ready?
By Kenneth D. MacHarg

San José, Costa Rica—With governmental and business leaders actively advocating the approval of the Central American Free Trade Agreement (CAFTA), some are raising questions about whether individual Central American governments are ready for the implications of wider trade and exchange.

For example, obstacles to foreign investment in Costa Rica must be overcome if U.S. and other foreign firms are to take advantage of the newly-signed agreement, according to the outgoing U.S. ambassador here.

John Danilovich, who has been appointed by President George W. Bush to a similar position in Brazil, criticized the difficult terms imposed on public works concessions in the country and urged changes in government policies to help develop a climate of better confidence among investors.

Danilovich said that Costa Rica must eliminate bureaucratic obstacles for those who have been granted concessions to build and operate public works and develop policies that would be conducive to competition in the areas of infrastructure and services.

The ambassador reported that numerous businesses had wanted to invest in Costa Rica, but ran into problems that could not be resolved.

"Anything with the government here is problematic," said Lynda Solar, General Manger of the American-Costa Rican Chamber of Commerce. "It is a bureaucratic monster with the right hand not knowing what the left hand is doing and changing roles in the middle of the river."

Yet, Solar said that because the Costa Rican government does not have funds for infrastructure development, it needs outside investment to build roads and operate other government-related projects.

Danilovich cited the case of Alterra Partners, a California firm that has a 20 year contract to remodel and operate the country's main international airport in San Jose, and Harken Costa Rica Holdings that received a concession to explore for oil off the country's Caribbean coast. The Costa Rican government has reportedly threatened to rescind the Harken contract because of alleged non-compliance by the firm.

"This is a problem for the country and the North American companies that come to work here" Danilovich said. "For many years they have had problems with the government. I think it is important for the government to solve these problems especially once it begins the fight to get CAFTA approved."

While affirming that foreign businesses must expect to be monitored and to operate under Costa Rican law, the ambassador said that all branches of the Costa Rican government must improve the legal status of foreign investors and provide open competition in bidding for concessions.

Danilovich said that the Costa Rican government should work to resolve several cases of government appropriation of foreign businesses, some of which have been pending for 20 years.

The dispute with Alterra, which has concessions to operate airports in several countries including Peru and Singapore, revolves around an agreement the company reached in 2001 among 14 foreign banks that are financing the Costa Rica project, the country's Public Works and transport Ministry (MOPT) and the Civil Aviation Authority (CTAC). That accord reached agreement on "development expenses" for the airport, placing them at $18.6 million.

However, Costa Rica's Comptroller General's office said the original contract bid placed the expenses at $3.4 million and could not exceed that.

The amount has been in dispute since last year with the result that the participating banks have frozen funds for the project.

A two month negotiation period has begun on the dispute, with the threat that Alterra's contract could be cancelled. Alterra has warned that it is ready to sue the government for $150 million in damages if the agreement is broken.

Meanwhile, international airlines that serve the San Jose airport, including American Airlines and Delta, have rejected a proposed increase in usage fees designed to help provide funds for the expansion and operation.

Officials from the Costa Rican Association of Airlines charged that the new fees would represent a 1,200 percent increase over the next three years. Already, Costa Rican airport usage fees are 35% higher than those in other Central American countries.

"The fact is, the concession laws have not worked here," Carlos Denton, the elected president of the Chamber and CEO of Sid Gallup charged. "I would tell any foreign company that is considering operating under a government concession to be careful, go into the project with open eyes and be prepared for years of wrangling," he said.

Under governmental concessions, a foreign form receives permission to develop a project such as a highway or the airport, invests their own funds in the effort, and then operates it for a period of time such as twenty years. During that time the company expects to recoup its investment and make a profit. At the end of the agreed time, the company turns the project back over to the government.

In addition to government bureaucracies, Solar blamed the concession problems on disagreements within the legislature and the lack of judicial security that protects foreign investments.

“Many of the contracts are not respected,” she said. “After an agreement is made, outside groups such as environmentalists can challenge the contract in the constitutional court and it can sit there for several years.”

Solar said that one concession for a foreign firm to build and operate a prison has been tied up for more than two years in the court by a challenge to the legality of a private firm operating a government prison facility.

While the government is interested in foreign investments, Solar said, “This is a socialist country and many congressmen are not particularly pro-business. In addition, many members of congress do not see eye to eye on these issues.”

Solar said that private investors wishing to open their own business do not experience the same problems that those wishing to invest in concessions do. “The business climate here is dynamic,” she said, explaining that approximately 200 foreign businesses have very successful operations here.

Denton cited Proctor and Gamble, Dole, Abbot Laboratories and Citibank as businesses that he termed “quite successful,” in Costa Rica.

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