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TRADE POLICY REVIEW MECHANISM

REPLIES BY THE REPRESENTATIVE OF COSTA RICA

13 July 1995

I. Current situation and outlook for the Costa Rican economy

1. The relative macroeconomic stability achieved by Costa Rica in recent years suffered a serious upheaval in 1994, principally in the fiscal sector. The public sector's consolidated deficit, which represented less than 1 per cent of GDP in 1993, rose to 8 per cent in 1994. One of the main reasons for this increase was the growth in the Government's deficit, which rose from 1.9 per cent of GDP in 1993 to 7 per cent in 1994. The Costa Rican Government, with the support of the population as a whole, decided that a drastic reduction of the fiscal deficit was an indispensable prerequisite for an economic strategy aimed at consolidating economic stability and promoting the growth not only of the economy as a whole but especially of real wages. The goal is to reduce the fiscal deficit by more than 50 per cent in 1995 to 3.5 per cent of GDP, and in 1996 it is hoped that it will not exceed 0.5 per cent of GDP. The Government expects that, as a result, inflation will be below 10 per cent in 1996 and the borrowing rate will fall from 32 per cent to 18 per cent.

The Government therefore sought the consensus needed to adopt and implement a long-term, socially and economically sustainable solution to the problem of public finance and this has already started to bear fruit. The measures will of course have to receive legislative approval, which depends on a branch of government distinct from the Executive. Nevertheless, given the manner in which the Costa Rican system functions, it can confidently be predicted that the national political agreement reached in recent weeks will be implemented, as has already begun with the approval of a series of laws by the Legislative Assembly.

2. The Government's marked fiscal deficit is the result of the 54 per cent increase in current expenditure while revenue only rose by 16.4 per cent (corresponding to a reduction of 3 per cent in real terms). The rise in expenditure was mainly due to four factors: (i) an expansionist fiscal policy reflected in pay, procurement of goods and services, etc. linked to the political-electoral cycle; (ii) an increase in the Government's fixed current costs over which it has no control (payrolls, which are sometimes indexed, a fixed share of the budget for certain institutions, etc.); (iii) the increasingly heavy burden of servicing the internal debt, amounting to 21 per cent of GDP in 1994, and the debt incurred by the Government to finance the public sector deficit; and (iv) the collapse of the third most important State bank. To these cyclical and structural trends must be added a number of special factors that help to explain the marked deterioration that occurred in 1994, for example, expenditure related to the elections and the change of Government, paying off outstanding costs, increased interest rates on the internal debt, etc. Tax receipts fell by 3 per cent in real terms as a result of several factors: (i) reduction of the sales tax from 11 per cent to 10 per cent; (ii) reduction in import tariffs for raw materials from 10 per cent to 5 per cent; (iii) reduced growth of imports thereby diminishing the revenue derived from tariffs; (iv) lower revenue from income tax.

3. The Government has drawn up a strategy to provide a long-term solution to the problem of public finance. This has a number of facets, for example:

- Consideration by the Legislative Assembly of a tax package comprising proposals on fiscal justice and tax adjustment. The former proposes giving the tax administration the authority to verify that taxpayers are fulfilling their obligations, ensure efficient collection of taxes and punish with severity any failure to meet obligations. The second proposal aims to increase tax revenue directly by standardizing profits tax at 30 per cent, establishing new tax brackets for wages and pensions, increasing sales tax from 10 to 15 per cent, updating the vehicle tax and eliminating a number of minor taxes. The first of these draft laws will be adopted during July 1995, and it is hoped that the other, which is more controversial but is already the subject of agreement in principle will be adopted in August 1995;
- implementation of programmes to modernize the tax and customs administrations with the aim of simplifying the procedures to be followed and increasing the efficiency of both organizations. A general customs law has been submitted to the Legislative Assembly for this purpose, proposing a structural reform of customs so as to allow them to function efficiently and adapt to the expanding needs of Costa Rica's foreign trade. The draft law is aimed at meeting the fundamental objectives of a modern customs system; facilitation of foreign trade and appropriate and efficient collection of duties. A number of changes are introduced at the operational and regulatory levels. These include computerized systems linking up all customs offices, ports of entry, factories, free zones and other auxiliary customs services. Selective and random controls are proposed and the obligation to use the services of a customs agent is abolished in part so that customs operations can be effected without their participation. The customs are given legal powers to exercise control over documentation related to modern instruments of trade policy; tariff quotas, rules of origin, technical standardization, preshipment inspection, etc. Specialized administrative and judicial bodies are to be set up to deal with appeals against administrative decisions related to foreign trade. Lastly, several unlawful operations are to be punished more effectively by severe penalties. The draft has been approved in the relevant committee and it is hoped that it will be adopted this month;
- elaboration of a programme for the institutional reform of the public sector, covering labour mobility, the reorganization, amalgamation or even elimination of public institutions. The section on labour mobility is already being implemented and it envisages a reduction of 8,000 posts in 1995. It is also hoped to make rapid progress with the plan to reform public institutions during 1995;
- creation of a Presidential Commission on reduction of expenditure with the objective of drawing up a programme to reduce public spending in 1995 to 2 per cent of GDP in relation to the negative projections of growth in public spending equivalent to one third of the fiscal deficit of the preceding year. The Commission has already presented its plan, which is being carried out scrupulously.

4. In addition, with a view to pursuing the structural reform of the State and finding a long-term solution to the problem of public finance, the following draft laws have been put before the Legislative Assembly. They are all the subject of consensus on the part of the two major parties and will consequently be adopted during coming months:

- Economic guarantees: two draft laws are currently before the Legislative Assembly proposing that a number of "economic guarantees" should be given constitutional status, for example specific affirmation of the right to freedom to conduct business operations, import and export; limitations on the power of the Legislative Assembly to delegate its authority for the fixing of domestic taxes, surcharges and duties; making the State's regular budget subject to a series of rules, e.g. current and capital expenditure may not exceed current income by more than 1 per cent of GDP, the increase in public credit may not exceed the annual percentage of nominal growth in GDP during the preceding year, the rate of growth of direct or indirect credit obtained by the State and State bodies as a whole from the national banking system may not be more than the percentage of growth in total credit granted to the private sector. After this legislation has been adopted, any budget that does not meet the aforementioned provisions will be null and void and consequently cannot be implemented;
- reform of the financial administration law (*Ley de Administración Financiera de la República*): this draft contains a number of provisions establishing procedures and measures to give effective and efficient support to the regulation and control of income and expenditure by the Public Treasury;
- law harmonizing pension schemes paid out of the State's budget (*Ley de Normalización y Sostenibilidad de los Regímenes de Pensiones con cargo al Presupuesto Nacional*): this draft was adopted by the Costa Rican Legislative Assembly on 9 July last;
- law ending the State's liquor monopoly (*Ley de Apertura del Monopolio Licorero del Estado*): this basis of this draft is that the production of ethyl alcohol, as well as production and utilization of all other types of alcohol, should be the responsibility of the private sector. It aims to promote an activity that has stagnated and gradually to eliminate the State's monopoly on alcohol. State control of the quality of alcohol and liquor and the protection of consumer health will remain;
- law on the regulatory authority for public services (*Ley de la Autoridad Reguladora de los Servicios Públicos*), transforming the National Electricity Service: the aim is to transform the National Electricity Service into a regulatory authority for public services so as to establish an efficient body that will regulate and fix prices, rates and fees for public services paid by private and State enterprises with a high degree of technicity and as a guarantee and protection for consumers and users.

5. Despite its clear determination to reach a long-term solution, which implies structural reform of public finance, the Government has to meet short-term obligations, mainly related to servicing the external debt and paying out allowances for labour mobility, for which it will need immediate resources. This is why, even though the intention is to adopt the aforementioned legislative package as a whole, especially the draft tax adjustment law (*Ley de Ajuste Tributario*) which increases sales tax by 50 per cent, on 29 March last the Government increased the most-favoured-nation tariff by 8 percentage points. This measure applies to the majority of tariff headings with the exception of those for which the increase, added to the prevailing tariff, would have led to a tariff that exceeded the bound rate. The tariff increase is therefore consistent with the tariff bound by Costa Rica in the WTO. Consequently, Costa Rica will not make use of Article XXVIII of GATT 1994, but has notified this measure under the 1979 Understanding Regarding Notification, Consultation, Dispute Settlement and Surveillance. A document bearing the symbol WT/L/74 will soon be circulated. There is no information on the amount generated by this measure, but it is calculated that it will be around ¢16 billion a year (about US\$ 90 million at the present exchange rate).

6. In addition to the laws already mentioned, the Government has made it a priority to amend other laws that form an important part of Costa Rica's "legal infrastructure" because they need to be modernized and brought into line with the changes that have occurred in the economy. The common goal of the amendments proposed is to update the legal framework in pursuance of the Government's commitment to support further stages in the opening up and liberalization of the economy. A number of draft laws are being discussed or have been adopted by the Legislative Assembly and these are mentioned in paragraph 44, page xvii, of the Summary Observations in the Report by the Secretariat. They include the following:

- Law creating the National Standardization Institute (*Ley de Creación del Instituto Nacional de Normalización*): this will create a specialized public institute under the Ministry of Economy, Industry and Commerce to replace the present Standards Office (*Oficina Nacional de Normas y Unidades de Medida (ONNUM)*). The new Institute will have better-defined legal powers adapted to the current requirements of technical standardization, as well as an appropriate organizational infrastructure, budgetary and procurement flexibility and greater capacity for national coordination in the area of technical standardization. It is hoped that the law will be adopted during the first quarter of 1996;
- law on administrative contracts (*Ley General de Contratación Administrativa*): the aim is to reform the process of awarding administrative contracts in order to bring it into line with modern economic requirements and make it part of the process of commercial opening taking place in Costa Rica, ensuring that procurement procedures in the public sector are more efficient, rapid and straightforward. In addition, administrative contracts will be adapted to the international commitments assumed by Costa Rica in the Free Trade Agreement with Mexico. The relevant bill is Law No. 7494, adopted on 2 May 1995 and published in the Official Journal (*La Gaceta*) No. 20 of 8 June 1995;
- radiocommunications law (*Ley de Radiocomunicaciones de Costa Rica*): the objective is to make radiocommunications, related services, radio publicity and radiocommunication agents subject to modern legislation in accordance with the process of opening up Costa Rica's economy. There is no estimated date for adoption of this law by the Legislative Assembly;
- insurance laws: draft laws on the administrative restructuring and modernization of the insurance market are currently being considered, discussed and adopted by the Legislative Assembly. It is hoped gradually to open up the domestic insurance market and the National Insurance Institute (*Instituto Nacional de Seguros*) so as to privatize the selling of insurance and modernize the Institute.
- Paris Convention for the Protection of Industrial Property: approved by Law No. 7484 of 21 March 1995;
- laws on financial modernization: with the aim of modernizing and opening up the national banking system, two draft laws have been elaborated. The first contains a number of amendments to the law governing the Central Bank (*Ley Orgánica del Banco Central*) in order to make more independent and give it wide-ranging responsibilities for supervising financial bodies operating in Costa Rica. The second is a new law regulating financial entities and it provides for greater participation by the latter in the Costa Rican banking market, allowing them *inter alia*, access to the Central Bank's rediscount facilities and to seek current account deposits, previously restricted to State

banks. It is hoped to make the Costa Rican financial system more efficient as a key element in economic development. Both drafts should be adopted during the second half of 1995;

- law on autonomous or parallel generation of electric power (*Ley de Reformas a la Ley que Autoriza la Generación Eléctrica Autónoma o Paralela*): this law was published on 9 May last and it amends the terms for private sector participation in the joint generation of electric power, allowing the private sector to hold up to 65 per cent of the capital of Costa Rican enterprises jointly generating electricity, previously the percentage was 35 per cent.

A draft law on phytosanitary protection was withdrawn from the current legislative session. At present, there is no related draft before the Legislative Assembly.

7. In the context of Central American sphere, Costa Rica has played an important role in discussions on reforming the legal instruments relating to unfair trade practices, safeguards and customs valuation with the basic objective of bringing the rules into line with the agreements under the Uruguay Round. The discussion on unfair trade practices is already well advanced, although this is not the case for safeguards. Nevertheless, Costa Rica reserves the right to apply the Customs Valuation Code for a maximum period of up to five years. The adoption of these regulations does not require legislative approval.

8. Among the measures to be taken in pursuance of the process of liberalizing and opening up the economy, the Government hopes to continue the tariff reduction process, reducing the floor and ceiling levels of the tariffs applied, once the public finance situation has been normalized in the way mentioned above. Concerning those products which still have high tariffs as a result of the tariffication undertaken in conformity with the Agreement on Agriculture, these will be reduced in accordance with Costa Rica's Schedule of Concessions and Commitments to GATT 1994.

9. Lastly, along the same lines, although there is no overall plan for the restructuring, reduction or elimination of State monopolies in the future, it should be stressed that there are a number of measures, some of them at an advanced stage of discussion, aimed at moving forward in this direction in certain special cases. For example, mention has already been made of the proposal to eliminate the State's liquor monopoly, which it is hoped will be adopted during July 1995, proposals on the gradual opening up of the insurance market and the elimination of the State monopoly in this area, as well as proposals for opening up financial services and abolishing the State monopoly on demand deposits. It must be emphasized that these political decisions have been difficult to adopt as they necessitated discussion at the highest level and the consensus of Costa Rica's major political and civil sectors. Costa Rica is nevertheless at the first stage in the process of opening up these sectors and this is why it is not yet ready to consolidate the steps being taken in this direction.

II. Costa Rica's trade policy after the Uruguay Round

10. In December 1994, the Costa Rican Legislative Assembly approved the Agreement Establishing the WTO in time for it to enter into force on 1 January 1995. At the same time, the implementing legislation for the Uruguay Round was adopted so that many of the obligations assumed by Costa Rica under the Uruguay Round could be fulfilled, except in those areas in which Costa Rica intends to make use of the transitional periods provided for in the Round itself.

11. Costa Rica has met all its obligations on notification within the time-limits laid down in the relevant agreements and in accordance with the decisions of the various committees or groups. A list

of notifications submitted by Costa Rica is attached. Costa Rica will, as in the past, continue to fulfil its notification obligations within the periods specified.

12. In the context of the Uruguay Round, Costa Rica, together with other Latin American countries, negotiated better conditions for access of its banana exports to the European market within the common regime for the import of bananas adopted by the European Union. The agreement reached is covered by the provisions of the Uruguay Round and is included in the European Union's Schedule of Specific Commitments to GATT 1994. In this connection, Costa Rica regrets that the United States has initiated unilateral action to combat this agreement despite the strengthened system for the settlement of disputes agreed under the Uruguay Round.

(i) Tariffication and opening up of tariff quotas

13. Domestic legislation on commitments to eliminate import licences, tariffication and special safeguards for products subject to tariffs has duly been implemented in Costa Rica. Following the entry into force of the Law on Implementation of the Uruguay Round Agreements (*Ley de Ejecución de los Acuerdos de la Ronda Uruguay*), Law No. 7473 of 20 December 1994, all import licences were abolished, including those for non-agricultural products. Tariffs were also modified in order to meet tariff commitments, including the opening up of tariff quotas. This was done in the regulations on the allocation of tariff quotas (*Reglamento de Adjudicación de los Contingentes Arancelarios*), Executive Decree No. 23914-COMEX-MAG, published in the *La Gaceta*, No. 246 of 27 December 1994. With regard to special safeguard measures for agricultural products subject to tariffs, the regulations on the application of special safeguard measures (*Reglamento sobre la Aplicación de Medidas de Salvaguardia Especial para Productos Agropecuarios*), Executive Decree No. 23912-COMEX-MAG-MEIC, were adopted and published in *La Gaceta* No. 246 of 27 December 1994.

14. The allocation of quotas for actual access and minimum access is effected by granting stock exchange certificates which give the right to import within the quota fixed. The procedure is a transparent mechanism for allocating licences (*certificaciones*), utilizing a market system. These certificates are granted in a stock exchange operation to the importer or exporter who makes the import offer at the lowest price and their acquisition does not imply any outlay that distorts the agreed price (apart from the commission due on stock exchange operations). These operations are carried out in any stock exchange for agricultural products authorized to operate in Costa Rica. Generally, the parties to the operation (foreign exporter or domestic importer) establish the conditions of the sales contract, first of all fixing the amount, quantity and specifications of the goods. This preliminary contract goes to public auction. At the auction, the stock exchange for agricultural products awards the certificate to whichever third party (exporter or importer) improves on the price terms of the preliminary contract. If no proposal improves on these terms, the preliminary contract is finally accepted. The quantity of goods traded is assigned to the tariff quota for the goods in question. The quantities are cross-checked by the stock exchange and the Ministry of Agriculture and Livestock. The person awarded the certificate must import the goods within the maximum period indicated by the Ministry of Agriculture and Livestock. The maximum quantitative limit for these stock exchange operations - either individually or taken as a whole - is the maximum amount to be imported in conformity with the tariff quota. The quotas are assigned every four months. The transparency of this procedure is assured: prior publication in the Official Bulletin (*Diario Oficial*) of the date and amount of the quotas, regulation and publication of the procedure and of the products subject to the procedure. This information will shortly be notified in the context of the WTO's Agreement on Agriculture.

15. The tariffs applied within and outside the tariff quota are consistent with those bound by Costa Rica in the WTO. The attached table shows the tariff headings subject to quotas, the tariff applicable outside the quota at the beginning and end of the period of applicability.

16. Costa Rica has already prepared its replies to the questionnaire on import licensing procedures and will submit it within the time-limit.

(ii) Customs valuation

17. Since 1985, Costa Rica has used a mixed customs valuation system, which is a Central American regulation (Annex B to the Convention on the Central American Customs Tariff Regime) and is based on a system combining methodologies provided under the Brussels Definition of Value and Article VII of the GATT. Although the "normal price" (Brussels Definition), is the basis for customs valuation purposes, the price declared on the invoice or relevant documentation is also accepted. The normal price can be: the normal commercial price under fully competitive conditions (*precio usual de competencia*); the estimated transaction price (*el precio probable de compraventa*); the real transaction price (*el precio efectivo de compraventa*); or the price set on the basis of rental contracts (*precio determinado con base en el contrato o contratos de alquiler*). Apart from these methods, no other instruments (e.g. reference or minimum import prices) are used.

New legislation on customs valuation has to be adopted at the Central American level because it is an integral part of the regulations of the Central American Common Market. This subject is at present being discussed at the Central American level and it is hoped that a consensus will be reached shortly. It is difficult to forecast exactly when. In addition, Costa Rica has reserved its right to apply the Customs Valuation Code for a maximum period of up to five years. The Government has made it clear that customs valuation will conform strictly to the general principles of the Agreement on Implementation of Article VII of the General Agreement on Tariffs and Trade 1994, and considers that essentially the transaction value should be used to value the majority of imported goods. Regarding the estimated impact of adopting this criterion, it is expected that it will have a favourable effect on the opening up of imports. Because of the impalpable nature of the problem, it is not possible to make quantitative estimates of the probable effects of the change of methodology.

19. The database referred to in paragraph 63 of the Report of the Secretariat is deemed to be of great importance for the following reasons; it will provide detailed statistics of foreign trade, help to monitor under-valuation without the need to apply minimum prices and exercise control over ports of entry, departure, destination and origin and customs agencies.

(iii) Activities of State-trading enterprises

20. Costa Rica submitted a notification on State-trading enterprises in accordance with the Decision of the Council on Trade in Goods of 20 February 1995 (G/STR/N/CRI). It should be emphasized in this connection that as far as trade in goods is concerned the commercial responsibilities of State-trading enterprises such as the National Production Council (CNP) have been substantially reduced and their functions have now all been transferred to the private sector. The only State-trading enterprise that retains its exclusive import rights is the Costa Rican Petroleum Refinery (RECOPE S.A.), for the import of petrol and by-products. Its operations are however fully compatible with the non-discrimination provisions in Article XVII of GATT 1994.

21. Costa Rica wishes to clarify that during its accession procedure it did not affirm that there were no State monopolies in general, as indicated by one member, it simply stated that there were no State monopolies in the energy, fertilizers and cement sectors (paragraph 52 of the Report of the Working Party on the Accession of Costa Rica (document L/6589 of 27 October 1989)), which is correct.

(iv) Intellectual property rights

22. Costa Rica has undertaken a thorough revision of its copyright, trademark and patent laws, as well as other rules on intellectual property rights, so as to determine their consistency with the regime established in the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPs). The revision showed that it was necessary to accelerate ratification of the Paris Convention, make a number of amendments to the Law on Copyright and Related Rights and promote the adoption of special rules on trade secrets.

23. Costa Rica is aware of the importance of having regulations that are consistent with international trademark rules and on 30 November 1994 Central American countries signed a Protocol to the Central American Convention for the Protection of Industrial Property so that protection under the Convention would be compatible with international rules. Among the main amendments introduced by the Protocol is the specific recognition of well-known marks, although these have been protected under Costa Rican law for more than 30 years.

24. In addition, the revision underlined the need to change the current patent law so as to extend its scope and the term of protection. In view of the complex nature of such amendments, however, Costa Rica has decided to make use of the transitional periods provided for in the TRIPs.

25. Concerning the provisions on respect for intellectual property rights, Costa Rican legislation includes a number of measures and mechanisms for this purpose, including preventive measures, seizure and confiscation of goods infringing intellectual property rights, criminal and civil penalties. Nevertheless, some areas such as border measures and reversal of the burden of proof need to be strengthened further.

(a) General provisions

26. With regard to exceptions to the principles of national and most-favoured-nation treatment, Article 3 of the Central American Convention for the Protection of Industrial Property, which is the text applicable to trademarks, states that natural or legal persons owning a commercial establishment, an enterprise or industrial establishment or services in the territory of any of the contracting States, shall enjoy national treatment in the territory of any other contracting State.

27. Concerning the requirement on local use as a criterion for obtaining the protection of intellectual property rights, the Patent Law (*Ley de Patentes*) establishes that the granting of a patent involves the obligation to work it - meaning the obligation to manufacture the patented product - in the country or in another Central American country and if this obligation is not fulfilled within the period specified, the patent is forfeited. A similar provision applies to industrial designs. No patent has yet been forfeited for this reason.

(b) Patents

28. In order to harmonize Costa Rican legislation and international patent regulations, draft texts are being elaborated to extend the scope of the law as well as the terms of protection for certain types of invention. In view of the complexity and importance of these changes, Costa Rica intends to utilize the transitional periods provided for in the Agreement. After these have expired, Costa Rican legislation will be fully consistent with the Agreement. A copy of the provisions of the Patent Law concerning the rights of the patent owner is attached.

(c) Semiconductors

29. In Costa Rica, there are no special regulations on semiconductors. The protection provided for in the Agreement will be granted once the transitional period has expired.

(d) Copyright

30. The Copyright Law (*Ley de Derechos de Autor*) was recently amended by Law No. 7397 of 3 May 1994 in order to include computer programmes, their successive versions and programmes derived therefrom within the category of "literary and artistic works".

31. Under the Law, the term of protection for phonograms is 50 years from 31 December of the year of publication of the phonogram. The Law also gives producers of phonograms the exclusive right to authorize or prohibit direct or indirect reproduction of their phonograms.

32. Costa Rican legislation does not allow the granting of compulsory licences for works or phonograms. Because it considers copyright to be of a declarative nature, Costa Rican legislation protects it from the time of its creation or publication, whichever is appropriate, independently of registration.

(e) Trademarks

33. Any sign, word or combination of words, or any graphic or material medium whose special characteristics mean that it is capable of distinguishing the products, goods or services of one natural or legal person from the products, goods or services of the same type or category belonging to a different owner may be protected as a trademark.

34. The following may not be registered as trademarks nor elements thereof; national flags, shields, insignia or distinctive signs of the contracting States, foreign countries or international organizations; the names, emblems and distinctive signs of the Red Cross and religious bodies; the design of legal tender or banknotes, reproductions of share certificates and other commercial documents, seals, stamps, or revenue stamps in general; signs, words or expressions contrary to morality, public order or customs or which ridicule or tend to ridicule persons, ideas, religions or national symbols or international bodies, names, signatures, patronymics and portraits of persons other than the person applying for registration, technical or common names of products, goods or services, expressions, signs or phrases in general use and serving to indicate the nature of products, goods or services, shapes, appellations or descriptions of products, goods or services to be protected by a trademark or their ingredients, qualities, physical characteristics or the use to which they are to be put, signs or indications used to describe the type, quality, quantity, value or period of elaboration of products or goods unless they are accompanied by drawings or phrases which distinguish them, the usual and common form of products and goods, single colours considered in isolation, packaging which is in the public domain or has fallen into the public domain, simple indications of source or appellations of origin, distinctive signs which, because of their graphical, phonetic or ideological similarity, may cause mistakes or confusion with other trademarks, and maps.

35. There is no special definition of a well-known mark in Costa Rican legislation. The recent ratification of the Paris Convention, as well as the long tradition of protection by the law courts for this type of trademark, nevertheless ensure that the Costa Rican regime is compatible with the provisions of the Agreement. In this connection, it must be emphasized that, even though the Costa Rican regime is attributive, on many occasions over more than 40 years the law courts have recognized that well-known marks, even if they are not registered, can be given full legal protection. It is therefore possible to refuse to register a well-known mark or to order the forfeiture of a mark that has been registered by mistake in the name of a person other than the owner of the well-known mark.

(f) Industrial designs

36. The protection of industrial designs is covered by Law No. 6867 of 25 April 1983, which guarantees the owner the right to exploit the design exclusively and to grant licences to third parties for its exploitation. When the validity or ownership of a design is contested, the law allows the owner the right to demand compensation, except from the State or its institutions, for infringement during the proceedings, but no interference whatsoever in free trade in the industrial design is allowed during the proceedings.

37. The law states that any person may import products incorporating an industrial design for commercial purposes if it is not being exploited by the owner. The owner of an industrial design has the right to take action against any person who exploits the industrial design for industrial or commercial purposes, except in the case of products which embody an industrial design that has already been lawfully put on sale by its owner, a licensee or any other authorized person.

(g) Trade secrets

38. Costa Rica does not have any special legislation on trade secrets. Nevertheless, the Labour Code (*Código de Trabajo*) and the Criminal Code (*Código Penal*), as well as common civil law, regulate this area. The Labour Code makes it an obligation for an employee to respect scrupulously any technical, commercial or manufacturing secrets related to products in whose elaboration he has directly or indirectly participated or of which he has knowledge because of the work he carries out, as well as secrets regarding administrative matters whose disclosure would cause prejudice to the employer. The Criminal Code provides for imprisonment for any person who, because of his situation, office, employment, profession or art, is aware of a secret whose disclosure would be prejudicial and reveals it without any justified reason.

39. The Legislative Assembly is presently considering a draft law on trade secrets in order to bring Costa Rican legislation into line with the requirements of the Uruguay Round Agreement.

(h) Enforcement

40. Procedures for the enforcement of intellectual property rights are laid down in the relevant laws, for example, the Criminal and Civil Procedures Codes (*Códigos de Procedimientos Penales y Procesal Civil*). Law No. 7274 of 10 December 1991 set up the Third Chamber of the High Court for Administrative Appeals, which acts as the specialized body for intellectual property matters.

41. In connection with enforcement, Costa Rican legislation has a number of relevant measures and mechanisms, including preventive measures, seizure and confiscation of goods infringing rights, criminal and civil penalties. The protection granted through civil procedures mainly relates to the possibility of obtaining compensation and, at the criminal level, the law lays down penalties ranging from one month to three years imprisonment depending on the gravity of the offence.

42. Costa Rican legislation does not, however, provide for the possibility of reversal of the burden of proof nor does it empower the competent authority to order the defendant to present any evidence in his possession. Such provisions are contrary to the procedural principles on burden of proof laid down in Article 317 of the Code of Civil Procedure. The legislation does not contain any provision either on the possibility of ordering the destruction of goods infringing rights. On the contrary, Article 538 of the Code of Criminal Procedure states that these goods should be auctioned off. The practice followed by the judicial authorities when a trademark has been infringed has been to order the removal of the trademark and the donation or sale by auction of the products.

43. With regard to border measures the necessary provisions regulating this area will have to be included in the customs legislation and a draft law will be drawn up. For the present, there are only some provisions in civil legislation together with the specific laws which allow judges to order the customs authority to adopt certain measures.

44. Judicial proceedings for the infringement of copyright have the same duration as any other civil or criminal proceedings, depending on the case and the complexity of the matter, whether or not all the remedies available in law have been used, etc.

(v) Services

45. Costa Rica submitted its Schedule of Specific Commitments under the General Agreement on Trade in Services covering four sectors: tourism, computer services, health and education. Costa Rica considers that it made a positive contribution to the Uruguay Round negotiations in this area, consistent with its level of development and the consensus in Costa Rica regarding the liberalization of certain services sectors. Costa Rica hopes to pursue its constructive participation in the future in the relevant discussions according to the matters of greatest interest to it.

III. Costa Rica and economic integration

(i) Overview

46. Costa Rica's trade policy is based on the principle that participation in economic integration systems should be fully complementary and compatible with the multilateral trading system and with the commitments it has made to trade liberalization. Through these integration systems, Costa Rica hopes that it will be able to promote more rapid development of international trade with other countries in the system, without in any way harming foreign trade with the rest of the world. The demands of trade mean that it is necessary to seek additional ways of promoting trade relations with certain countries under conditions of reciprocity. These regional measures are not intended to divert attention from meeting the commitments or promoting the objectives of the multilateral system. The complementarity of both approaches is shown by the fact that the trade policy instruments embodied in bilateral or regional systems to which Costa Rica is party are based on the WTO Agreements themselves.

(ii) Central American Common Market (CACM)

47. Costa Rica is committed to the Central American integration process and this is of overwhelming importance for its foreign trade since 15 per cent of Costa Rican exports go to this market and just under 10 per cent of its total imports come from the region. Costa Rica has played an active role in promoting the development of the Central American Free Trade Area and in encouraging the renewal and modernization of the legal instruments of the Central American system. Its role has been particularly important in the development of new intra-Central American instruments on rules of origin, unfair trade practices, safeguard measures and the settlement of disputes. Concerning the common external tariff, Costa Rica believes that, as far as tariff policy is concerned, tariff ceilings and floors should be harmonized, as occurs in the majority of tariff systems. This subject is currently being discussed because a number of Central American countries have already adopted or are in the process of adopting other solutions. Even though a common external tariff might at a given time restrict the capacity for manoeuvre in the area of tariff reductions, the Central American system has proved to be sufficiently flexible over the years, allowing member countries to make progress according to their desires and needs. For the moment, Costa Rica does not envisage moving forward in other areas of economic integration.

48. The General Treaty for Central American Economic Integration was duly notified to GATT by the only Central American country which, at the time the Treaty was signed, was a GATT contracting party, namely, Nicaragua (L/1425/Add. 1), therefore, Costa Rica considers that the obligation to notify the Treaty has already been fulfilled.

49. Compliance with the commitments undertaken at the Central American level is monitored by various regional political bodies. There is no single regional jurisdictional body or a special body with exclusive monitoring responsibilities. The various political bodies are the Summits of Presidents, the meetings of ministers responsible for integration, meetings of deputy ministers responsible for integration and meetings of directors of Central American economic integration. These bodies propose, negotiate and resolve any disputes that might arise in carrying out the regional integration commitments. There is no regional mechanism for the settlement of disputes. Nevertheless, work is currently going on in order to define and establish such a mechanism and Costa Rica is extremely interested in its creation.

50. The Government does not share the view expressed in paragraph 23 on page xiv of the Summary Observations because the deliberate purpose of tariff escalation is not to protect domestic manufactures and raw materials of CACM origin. Bearing in mind the national and regional scarcity of raw materials, Costa Rica's tariff policy is relatively liberal towards raw materials and their origin is not relevant. For manufactures not produced in Costa Rica, the trend of the tariff structure is similar to that for raw materials and does not denote a typical tariff escalation model.

(iii) Free-Trade Agreement between Costa Rica and Mexico

51. The Free Trade Agreement between Costa Rica and Mexico provides for the gradual elimination of the tariffs applicable to almost all the tariff schedule in several stages. Upon the entry into force of the Treaty on 1 January 1995, around 75 per cent of tariffs were immediately reduced in both countries. In the coming five, ten and fifteen years, the remaining tariff headings will be reduced with the exception of 1.78 per cent of Costa Rica's tariffs and 1.08 per cent of those in Mexico, which will maintain the applicable tariff.

52. According to Annex 3 to Article 4-04 of the Agreement, if Mexico wishes to buy sugar in a particular year, it will give Costa Rica a preferential quota of 19 per cent of its total requirements. If Mexico does not require sugar in a particular year, the preferential quota will be zero.

53. Together with Mexico, Costa Rica will shortly notify the Free Trade Agreement between the two countries after they have decided on the most appropriate regulatory framework in which to make the notification. A decision regarding the mechanism to be used for notification has not yet been taken.

(iv) Other

54. Costa Rica will discuss with the Dominican Republic and Panama the most appropriate way in which to notify the trade agreement concluded with these countries. Concerning the remarks by one delegation on the Northern Triangle, we must make it clear that Costa Rica is not a member, nor has it ever been a member, of the so-called "Northern Triangle", neither is Mexico, so no notification of this system is required.

55. The diversion of trade and investment to Mexico are two real problems facing Costa Rica following the creation of the North American Free Trade Agreement (NAFTA). Costa Rica will shortly be submitting information in this regard.

56. Access to the Panamanian market for Costa Rican products under a preferential scheme is difficult to assess in real terms for a number of reasons. On the one hand, the so-called Free Trade and Preferential Trade Agreement with Panama identifies the products concerned according to the Central American Uniform Tariff Nomenclature (*Nomenclatura Arancelaria Uniforme de Centroamérica (NAUCA)*), whereas Costa Rica uses the Central American Harmonized System (SAC). Since the NAUCA system contains many fewer headings than the SAC, this gives the impression that the Agreement covers a large number of products, although in fact the provisions do not apply to all the headings designated but only to certain products within a given heading. For example, under the heading relating to crustaceans and molluscs, the Agreement only covers shrimps. The statistics do not distinguish products but headings, which makes it appear that any product exported to Panama under this heading enjoys preferential treatment whereas this is only the case for shrimps. One other reason why the Treaty might appear to be too broad is that the Panamanian market has been closed for years, protected by high tariffs and different types of non-tariff barriers against a large number of Costa Rican products not included in the Agreement - or subject to minimum quotas - for example, pork, dairy products, sausages, coffee, oils etc., which Costa Rica is well placed to export. Finally, the fact that a product is covered by the Agreement does not guarantee unrestricted access to the Panamanian market because a large number of products covered by the Agreement are subject to quantitative import restrictions on the basis of local supply criteria. Consequently, any figures concerning the percentage of Costa Rican trade entering the Panamanian market under a free trade regime must be analysed in the light of the foregoing considerations. In view of all the restrictions on Costa Rican exports to Panama, Costa Rica has requested bilateral consultations with Panama in the context of its accession to WTO in the hope of improving access to what is a natural market for Costa Rican products.

57. Negotiations on the conclusion of a free trade agreement among Central American countries, Venezuela and Colombia have been suspended for a number of reasons. Costa Rica believes that it is unlikely that the negotiations will recommence in the short term because the Agreement was complex from the outset, the way in which negotiations were pursued was difficult and the definition of a future common external tariff is still pending in Central America.

58. In Costa Rica, the process of opening up trade was initiated unilaterally. However, over the years, liberalization measures have been taken in a number of forums both nationally, regionally and at the multilateral level following Costa Rica's accession to GATT in 1990. It cannot be stated that Costa Rica's opening economy was the result of regional liberalization processes, although it must be admitted that both the regional and purely national processes have been mutually supportive and are of equal importance. Likewise, multilateral (GATT/WTO) and bilateral (Free Trade Agreement with Mexico) liberalization processes complement these measures.

IV. Specific questions related to trade policy

(i) Technical standards

59. National legislation on technical standards makes the necessary separation between standards and technical regulations, the former being voluntary and the latter mandatory. Executive Decree No. 22263-MEIC of 3 June 1993, published in the *La Gaceta* No. 129 of 8 July 1993 on general terms and definitions (*Términos Generales y Definiciones Concernientes a la Normalización Técnica y Actividades Conexas*) recognizes the difference between the two and their mandatory or voluntary characters.

60. A procedure exists for the publication of draft standards and for taking into account comments thereon. Since 1995, the Standards Office (ONNUM) of the Ministry of Economy, Industry and Commerce (MEIC) has published a notice in the *La Gaceta* informing persons interested that they have

a period of 60 days in which to make comments on a specific draft technical regulation. These comments are duly taken into account in the final version of the regulation or official standard.

61. The following five groups of products must obligatorily be registered with the organizations mentioned before they can be sold:

- Drugs, cosmetics and sanitary products: Department of Narcotics (*Departamento de Drogas Estupefacientes, Controles y Registro*) of the Ministry of Health;
- Toxic substances or products and dangerous substances, products or objects: Registry of Toxic Substances (*Departamento de Control y Registro de Sustancias Tóxicas y Medicina de Trabajo*) of the Ministry of Health;
- Food products: Department of Food Control (*Departamento de Control de Alimentos*) of the Ministry of Health;
- Veterinary drugs: Department for Veterinary Products (*Departamento de Inscripción, Constatación de Calidad y Fiscalización de Medicamentos Veterinarios*) of the Ministry of Agriculture and Livestock;
- Agricultural and similar pesticides: registered by the Directorate General of Agricultural Protection (*Dirección General de Protección Agropecuaria*) of the Ministry of Agriculture and Livestock.

62. Where registration requires the submission of a certificate issued by the health authority in the country of export, any type of official certificate issued is acceptable provided that it has been legalized and authenticated by the Costa Rican consular authority in the country of export. These certificates do not have to be on a particular type of form, it suffices that they should contain the information required and be issued by the health authority in the country of export. In some cases, where the administrative structure of a particular country does not provide for the issue of such certificates, they may be issued by chambers of commerce, relevant institutes or other associations of recognized capacity in certifying the characteristics required by Costa Rican legislation.

63. Costa Rican technical regulations and standards are based on international technical standards. When drawing up a particular standard, international parameters for the product concerned are incorporated and, in principle, care is taken not to distort the standard in order to accommodate domestic production conditions. Only two domestic standards are incompatible with international standards: soap and condensed milk.

64. ONNUM of the Ministry of the Economy, Industry and Commerce is the national organization responsible for accrediting quality control bodies and is also the official organization responsible for metrology.

65. ONNUM issues the labelling certificate for food products and for all other goods whose technical specifications are not the responsibility of other special ministerial offices (for example, the Ministry of Agriculture and Livestock and the Ministry of Health with the exception of the Food Control Office). The label has to be approved for the first shipment of the product. After it has been approved, imports may be shipped for the following five years without any further approval of the label, unless the producer alters any of the components listed on the label. When this five-year period has expired, the interested party may submit a new application for approval of the label.

66. There are no restrictions on market access or national treatment for organizations supplying laboratory services wishing to set up in Costa Rica. If they fulfil the horizontal requirements for establishment, they may set up in Costa Rica. ONNUM is the official organization responsible for authorizing laboratories.

67. The labelling certificate issued by ONNUM is required before the foreign trade single window can approve the import permit and the goods can be cleared through customs. The decision approving the label (i.e. the certificate) is only submitted once to the foreign trade single window and does not have to accompany the product for retail sale. The label itself must, however, be affixed to the product for retail sale so that the final consumer may read it.

(ii) Anti-dumping

68. The current anti-dumping legislation is being amended to harmonize domestic legislation with the WTO's Anti-Dumping Code. The following are some of the amendments being discussed: more stringent criteria for lawful initiation of an anti-dumping procedure; increased possibilities for intervention by sectors concerned; not allowing selling at a loss to be part of the production costs; increased transparency criteria; changes in the *de minimis* rules; clauses on the revision and gradual elimination of anti-dumping duties.

69. Costa Rican anti-dumping legislation will be based on Central American anti-dumping regulations. National legislation will then be consistent with Central American rules.

70. Regarding the Free Trade Agreement between Costa Rica and Mexico, the chapter regulating unfair trade practices is based on the principle that the two countries will apply domestic legislation in strict conformity with the Anti-Dumping Code and the WTO Agreement on Subsidies and Countervailing Measures. There are, however, minor differences in the procedures and application of countervailing or anti-dumping duties. These include the following: an investigation is terminated not only when imports of the product concerned represent less than 3 per cent of total imports (as provided in the Codes), but also when such imports represent less than 1 per cent of the domestic market (which is not the case in the Codes); the Free Trade Agreement includes anti-circumvention provisions; it also allows the holding of public hearings at which interested parties may question their counterparts on the information or evidence submitted.

71. According to the legislation in force, the role played by consumers and industry in anti-dumping procedures is very limited and two channels are available: (1) initiating a procedure, in the case of industry, or (2) through the Technical Commission, which is consulted on the draft final decision. The Commission is composed of officials from the public sector and representatives of the private sector, including industrialists. It is envisaged that the Central American draft regulations will not only contain broader parameters for participation by interested parties but will also involve consumers' organizations in the Technical Commission.

72. In principle, there are at present no detailed mechanisms to halt unfair trade practices within the Central American system. Any such practices must be discussed and negotiated at the Government level through the various regional bodies administering the integration process: the meeting of directors of Central American economic integration, the meeting of deputy-ministers of integration or the meeting of ministers responsible for integration. As one of the new Central American regulations on unfair trade practices, Costa Rica supports application of the regulations to be adopted, which will be compatible with the WTO Codes, to unfair trade practices both within and outside the region without any distinction whatsoever.

(iii) Free zones

73. Although it is true that the free-zone regime is an important tool for promoting exports and attracting investment, it is not correct to state that a large part of the economy is operating under this regime. Exports under the free-zone regime represented 10.23 per cent of the total volume of exports in 1993 and 12 per cent in 1994. It is not possible to propose the incorporation of incentives under this regime within the general tax system because this would seriously affect public finance.

74. Any Costa Rican or foreign natural or legal person not benefitting from any other special export regime for the same product may take advantage of the free-zone regime, the only requirement being to submit an application form and meet certain non-substantive formal requirements.

75. The granting of free-zone status to companies outside the regime has been very limited. It only applies to 20 per cent of the 160 companies created, so it is clear that granting such a regime to companies outside free zones is an exception. The vast majority of cases concern companies whose operations are not adapted to the free-zone area because their production processes require location in a special geographical area or because their processing plants must be near the suppliers of their raw materials or, finally, because they provide employment opportunities in less-developed areas of Costa Rica.

76. The significant growth in the regime in recent years has led to net improvements in investment, employment and exports. Only five of the 160 companies in the regime moved into Costa Rica itself in order to increase investment and the number of jobs.

77. The tax incentives in force in Costa Rica are fully compatible with the provisions of the Agreement on Subsidies and Countervailing Measures. According to these provisions, exemptions in the context of free zones are legal and do not constitute a specific subsidy because they are granted to any agricultural or industrial, commercial or production enterprise, whether domestic or foreign, producing goods and services, and established in a free zone regardless of the number of employees or the amount of its capital. Regarding incentives that are prohibited such as exemption from profits tax in the free zone regime, Costa Rica has undertaken to eliminate them within the period of eight years available to it.

(iv) Other

78. The concepts of "traditional, non-traditional and self-sufficient" products have been used to distinguish groups of products and policies in specific instances and this continues to be the case. The term "self-sufficient" is used to distinguish products whose major market is Costa Rica. This does not, however, imply any restriction on the export of such products. This term is not related to food security.

79. The "Plan 5000" for exports is aimed at establishing clear long-term rules for the export sector. The Government has therefore sought to enact a new scheme of incentives consistent with the objective of eliminating existing distortions in the structure of production costs and with Costa Rica's fiscal situation, as well as being compatible with the WTO Agreement on Subsidies and Countervailing Measures. The new programme of incentives is currently at the initial stages of discussion within the Government and will then be revised and made available to the public. The following are some of the incentives being discussed: modernization of the financial system; tariff reduction; improvement of the port infrastructure; promotion of competition in certain public services; flexibility of procedures related to foreign trade.

80. The Government will formally abrogate the legal provisions related to CIEX during the course of 1995.

81. Customs procedures require the consular authentication of certain international trade documents before they are submitted to the customs at the port of entry. The Government of Costa Rica has consular offices in the world's major ports so that they can examine the export documents and collect the corresponding consular fees for legalizing or authenticating documents. The objective of the policy of legalizing civil and commercial documents is to guarantee their legitimacy. Since these documents are drafted and agreed in foreign territory, they must be legalized by Costa Rican consular authorities in the country of issue in order to be valid in Costa Rica. In accordance with the consular tariff, fixed in Executive Decree No. 23118-RE of 14 March 1994, the following commercial documents or acts must be legalized by the Costa Rican consul in the country of shipment: sworn declarations on trademarks; signatures of foreign authorities (including phytosanitary and zoosanitary authorities); power of attorney for the registration of trademarks, patents or authentication of certification of a trademark or patent in the country of origin or certification that a particular trademark or patent is not registered; certificates of origin, bills of lading, air waybills and commercial invoices; documents for shipping clearance, lists of crews, lists of passengers, declaration that no passengers are carried, cargo manifests, consular clearance papers, health permits and rectifications; certified copies or duplicates of documents needed for the clearance of ships. The amount of the fees to be paid is shown on the Costa Rican consular tariff. There is a direct relationship between the fee for the authentication process and the cost of the service itself.

82. Although it is true that the mooring and handling fees are higher for imports than exports, the Government is currently revising these systems as part of the overall reform of port activities.

83. Regarding paragraph 11 in Chapter IV, page 41, of the Spanish version of the Report of the Secretariat, it should be emphasized that the expression "*todas las exportaciones deben ser almacenadas para su inspección*" is incorrect. The text should read that all imports must be stored at the customs warehouses, as appears in the English version of the Report.

84. Costa Rica abolished import licences for poultry products on 1 January 1995. Since then, any economic agent has been able to import poultry, poultry products and any other product previously subject to an import licence. Some poultry products for which tariff quotas have been fixed (0207.3990, 0207.4190, 1601.0020, 1602.1020, 1602.3900) have been made available to economic agents through a stock exchange regulated by market rules under Title IV of the Code of Commerce and in accordance with the procedure described above. At present, contracts have been given to enterprises participating in the stock exchange mechanism to import a total of 72 metric tonnes of chicken legs (this allocation corresponds to the first four months of the year and a total of 698 metric tonnes remains for the last two four-month periods). The importer may be any national or foreign economic agent and the product may originate from any country.

85. The sanitary regulations governing the import of poultry products are consistent with international rules and have been in effect since March 1993. They bear no relation to the rules applied by other Central American countries and are in fact very similar to the regulations applied by the United States, with which the Government of Costa Rica has maintained close contact to the extent that the Government of the United States has declared that Costa Rica is free of certain diseases and may export to the United States. Over the five years during which Costa Rica has been trying to enter the poultry market in the United States, it has to a large extent harmonized its sanitary regulations with those in force in the United States. All zoosanitary regulations are applied on the basis of national treatment and logically this is also applicable to poultry products. A copy of the relevant regulations is attached.

86. Article 51 of the Central American regulations (*Reglamento Centroamericano de Prácticas de Comercio Desleal y Medidas de Salvaguardia*), Executive Decree No. 21984-MEIC, states that definitive safeguard measures must be in the form of tariffs. However, it also provides that non-tariff safeguard measures may be imposed in accordance with domestic legislation. In Costa Rica, in addition to tariff measures, the legislation allows one non-tariff measure to be applied as a safeguard measure. The competition law (*Ley de Promoción de la Competencia y Defensa Efectiva del Consumidor* (Law No. 7472 of 20 December of 1994)) provides that, exceptionally, non-automatic import licences may be imposed.

87. Costa Rica has already made progress in establishing a scheme for the elimination and rationalization of existing systems of exemption. As part of the Government's continuing tariff reduction programme, consideration is being given to the possibility of establishing a zero tariff for raw materials and capital goods, in which case an exemption system will no longer be needed.

88. Chart IV.2, (a) and (b) of the Report of the Secretariat give a picture of the number of tariff exemptions under various legal provisions. These exemptions only apply when there is no domestic offer for the goods to be imported; if these goods are available locally, their import is subject to payment of the corresponding import tariff. The tariff reduction process has partly eliminated the advantages of these tariff exemptions, with the aim of promoting international trade. This situation, combined with the fact that exemptions promote international trade, leads to the conclusion that the tariff exemption policy incites increased imports of goods free of tariffs. The objective of this policy is not to hinder international trade. Regarding tax exemptions in other programmes (free zones, export contracts, temporary admission, tourism incentives and Government procurement), these have not been created to serve as obstacles to trade nor do they have that effect. These exemptions are not subject to any criteria on origin and are available to any natural or legal person enjoying the tax incentives under these programmes. Such exemptions are totally neutral.

89. At present, Costa Rica has not given consideration to the advantages of joining the ATA Carnet scheme, therefore, no decision has been taken in this regard.

90. The following services are subject to the restrictions mentioned regarding market access and national treatment:

- Architectural and engineering services; (i) market access restrictions: in order to join the Federated College of Costa Rican Engineers and Architects (*Colegio Federado de Ingenieros y Arquitectos de Costa Rica*), membership of which is compulsory in order to exercise the professional service engineers and architects who have graduated in Costa Rica or abroad must have resided for a minimum uninterrupted period of five years in Costa Rica. A minimum period of residence is not required when the foreign professional is covered by a reciprocity agreement on exercise of the profession; (ii) restrictions on national treatment: registration quotas and the annual subscription to the College for engineering and architectural consulting enterprises vary: nationals pay ₡ 5,000 (around US\$28 at the prevailing exchange rate) under each heading and foreigners pay ₡ 200,000 (around US\$1,111 at the prevailing exchange rate) under each heading; (iii) local presence: notwithstanding the provisions on market access, engineers and architects entering Costa Rica for the purpose of professional consultancy work in State bodies or private enterprises or in professional colleges or associations must register with the Federated College, but do not need to join it, and are considered temporary members. They may not undertake any professional activity other than that for which they entered Costa Rica. Permits are only granted for a period not exceeding one year and their renewal is at the discretion of the College. In granting the permit, lack of expertise in Costa Rica in the professional field concerned is taken into account

and the permit will be granted subject to the College assigning a national professional to work alongside the foreign professional in order to enhance his experience and knowledge. No law has been drawn up to reform legislation in this area;

- Administrative consulting services: administrators of enterprises must be members of the professional association in order to exercise their profession. Professionals who have graduated abroad must submit their degrees to a Costa Rican university for recognition or equivalence before they can exercise their profession in Costa Rica. An exception to this procedure may be made when there is an agreement on equivalence or qualifications with the professional's country of origin. Registration of foreigners as temporary members is allowed when they enter Costa Rica to carry out specified tasks;
- Equipment repair and maintenance services: there are no restrictions on the commercial establishment of foreign enterprises in Costa Rica. The supply of a professional service related to repair and maintenance is, however, regulated by the requirement on access and national treatment in the area of professional services;
- Distribution services: no restrictions, except for distribution of the following goods: protected fish species (access prohibited), crude petroleum and by-products (State monopoly), fuel (restricted access). A commercial presence may be established in areas to which no restrictions apply;
- Transport agency services: transport agencies for air or maritime freight are not subject to any restrictions on market access or national treatment. Transport agencies for passengers (travel agencies) are subject to the following restrictions: (i) market access restrictions: (a) travel agencies must have a permit in order to operate and, to obtain the permit foreign enterprises must show that the firm's capital exceeds C 200,000 (US\$1,111 at the prevailing exchange rate), of which not less than 51 per cent must belong to Costa Rican nationals; (b) the Costa Rican Tourism Institute (*Instituto Costarricense de Turismo*) may ensure that there is no saturation of travel agencies to the detriment of the quality of services supplied; (ii) local presence; in order to obtain a permit, foreigners must have the right of residence in Costa Rica.

91. The principal function of the foreign trade single window is to process export and import permits as quickly as possible through an automated system decentralized in the main customs ports of entry and departure. Following the establishment of the window, import and export formalities have been significantly speeded up. It should be emphasized that both import and export procedures are transparent. The main objectives are the following: to centralize the public and private offices empowered by the law to issue export and import permits; to speed up the completion of foreign trade formalities; to simplify the documentation used to authorize imports and exports; to decentralize the automated system so as to provide services in the various customs ports of entry and departure; to provide up-to-date foreign trade statistics. The single window provides the following services: advice to exporters and importers regarding export and import procedures and documentation; advice to exporters and importers on tariff headings, tariffs and the use of certificates of origin; showing the foreign trade sector how the foreign trade and border procedure single window operates; processing export and import documents; certifying processing operations; export and import statistics; sale of documents required for export and import; processing service for the various customs ports of entry and departure; centralization of the processing of import exemptions covered by export contracts.

92. Regarding the CODESA holding companies shown in Table IV.4, the current situation has changed as all the companies mentioned have been sold or liquidated (see attached table). Concerning

State involvement in the Costa Rican economy, shown in Table IV.5, important changes are taking place. As mentioned above, a draft law opening up the State's liquor monopoly is being considered by the Legislative Assembly with the basic objective of eliminating it; two draft laws on insurance are also under consideration so as gradually to open up the national insurance market and the National Insurance Institute, leading to the privatization of the marketing of insurance and modernization of the Institute; two draft laws on modernizing and opening up the financial sector are being considered: the first amends the law governing the Central Bank (*Ley Orgánica del Banco Central*) in order to make the Bank more independent and give it broader authority to supervise financial entities operating in Costa Rica, while the second is aimed at giving private enterprises greater participation in the Costa Rican banking market, allowing them *inter alia* access to the Central Bank's rediscount facilities and to receive current account deposits, at present restricted to State banks. Concerning TRANSMESA, it should be pointed out that it is not solely concerned with passenger transport but is a still-functioning mechanism of a former CODESA subsidiary which is being wound up, without any effect on trade in these services. Lastly, the National Production Council does not at present market any seeds. See attached table.

93. The selective consumption tax is a fiscal measure derived from the need to generate new revenue when, at the end of the 1970s, important fiscal exemptions were granted to the industrial sector. From the outset, the law has divided taxable products into three annexes with varying tax levels, even though the Executive may change these within very strict limits. Each product is situated in an annex according to its consumption, whether it is a basic product or a luxury good. The tax is totally neutral as far as its impact on foreign trade is concerned. Goods are imposed in the same way, solely on the basis of the aforementioned criteria, regardless of national or foreign origin. The list of products subject to this tax by heading, together with the tax levels, will shortly be submitted.

94. The list of products subject to the IFAM and IDA taxes will also be submitted shortly together with further information on the IDA tax.

95. The modern basket of basic consumer items (*canasta básica moderna*) is a concept utilized to protect consumers with lower incomes, i.e. those whose wages are equivalent to or less than the legal minimum wage, and is composed of the main items consumed by this social sector and identified through market surveys carried out by the Directorate General of Trade of the Ministry of Economy, Industry and Trade. The basket is not a price-fixing mechanism, although in some cases theoretically prices could be fixed for certain products in conformity with the criteria explained. It is an official mechanism for monitoring price trends of products in the basket. The prices of these products are subject to regular analysis. If there is an excessive increase in their prices that does not reflect real economic factors (inflation, increased prices of imported inputs, etc.) and it has not been possible to exercise control through the other mechanisms mentioned above, the price may be fixed. Prior to doing so, however, consultations are held with producers in order to find a prompt and practical solution to the problem. On the basis of these provisions, the Directorate General of Trade (which is the body responsible for administering the basket) fixed the prices of rice, beef, butter, milk, cement and parking services in public car parks. The Directorate General implements the basket price policy, which is founded on four elements:

- (1) Ongoing monitoring of market prices, as mentioned;
- (2) market surveys in order to detect trends that could be remedied by promoting competition;
- (3) educating and informing consumers to show them how to identify and choose the most appropriate products and insist on the fulfilment of their rights;

- (4) regular revision of cost models to allow the benefits of increased productivity to accrue both to producers and consumers.

96. Under Costa Rica's banking legislation, the establishment of foreign subsidiaries or of foreign branches of foreign banks receive different legal treatment. In general terms, banking legislation differentiates between State banks and private banks. Foreign banks are classified as private banks. A foreign bank is not treated differently from a Costa Rican bank if it wishes to become established in Costa Rica.

97. Banking legislation does not allow the establishment of branches of foreign banks (without their own separate legal status) because, in order to operate, a private bank must obligatorily be established as a stock company (*sociedad anónima*), union or federated cooperative (*federación cooperativa*) (each of which has its own legal status). On the other hand, foreign banks may establish foreign subsidiaries in Costa Rica if they are set up as a stock company, union or federative cooperative and comply with the relevant restrictions on national treatment. The establishment of a bank in Costa Rica, requires that at least 20 shareholders must be natural persons, none of whom may hold more than 5 per cent of the capital. If it cannot be shown that the bank's shareholding is divided up in this way, the establishment of a foreign bank subsidiary is not allowed. A single foreign bank may not therefore establish wholly owned subsidiaries in Costa Rica. Only foreign legal persons may establish private banks in Costa Rica. It should be emphasized, however, that this requirement is only necessary for the establishment of the bank and not for its operation.

98. The banking legislation in force is currently being revised by a Special Committee of the Legislative Assembly. The Committee has managed to obtain significant opening up of the banking sector, but has not yet discussed the question of foreign banks. A consensus has however been reached that access requirements for foreign banks will be based on strictly legal criteria and not on conditions assessed at the discretion of the competent authority.

99. Comprehensive crop insurance is regulated by a special law (*Ley de Universalización del Seguro Integral de Cosechas*), Law No. 5932 of 27 December 1976. Traditionally, this insurance has been the subject of sizeable deficits. Article 2 of the Law therefore states that "25 per cent of the annual liquid revenue from the insurance monopoly shall be set aside to increase the capital of the INS. The remaining 75 per cent shall be used by the Institute to reinforce the technical reserve for contingencies of the comprehensive crop insurance". Crop insurance is therefore subsidized by the revenue from the other parts of the INS insurance portfolio and by the revenue from the issue of special State bonds (*Aporte Extraordinario Seguro Integral de Cosechas*), whose funds may be used in second place when the technical reserve for contingencies is not sufficient.

100. Development of the tourism sector in Costa Rica is governed by two factors. Firstly, the country's geographical situation, climate and geography, combined with its stable economic and political situation, provide ideal conditions giving Costa Rica a significant comparative advantage in the supply and export of this service. Costa Rica's natural diversity, stable climate all year round and its relative security are some of the factors that have had an impact on tourism. Transport facilities, the short distances between the beaches, mountains and cities have made Costa Rica an attractive tourist destination. In addition, the pleasure provided by nature in all countries is particularly attractive in Costa Rica and has been exploited. Costa Rica's role in mediating peace in Central America has increased international interest in the country. From the institutional perspective, the conditions required in order to respond effectively to growing demand have been created. A Ministry of Tourism has been set up, a National Tourism Plan has been drawn up and the tourism industry has been given important incentives, all of which have made tourism a dynamic activity. The Costa Rican business community, with support from foreign investment, has adapted to the demands for tourist services,

undertaking the transformation needed in transport, hotels, various tourist services etc., which makes them attractive for tourists from all parts of the world.

Regarding incentives, the situation has changed slightly since 1992. Law No. 7293 was adopted on 31 March 1992 and published in *La Gaceta* No. 66 of 3 April 1992, with the aim of rationalizing incentives. Tourist companies may benefit from a number of incentives depending on their sphere of activity: exemption from tariffs and taxes on the purchase of goods for the purpose of exploiting tourism, increased rate of depreciation of goods, exemption from municipal and territorial taxes and the establishment of a special foreign exchange regime. No date has been fixed for the termination of these incentives.

There is no evidence that the orientation of foreign direct investment to the tourist sector has affected other areas of economic activity.

Because there is no register of capital in Costa Rica, it is not possible to estimate the total amount of foreign direct investment devoted to tourist activities.

There is no proof that the restriction on national origin for 50 per cent of the capital of a tourist enterprise has been an obstacle to investment. Firstly, because this restriction only applies to land concessions in the costal zone (a band of 200 metres landwards from the usual high water mark along the whole of the national coastline), and not in the rest of national territory. Secondly, because foreigners, as natural persons, may obtain such a concession provided that they have resided for five years in Costa Rica.

101. A copy of the competition and consumer law is attached.

LIST OF NOTIFICATIONS SUBMITTED TO THE WTO
BY COSTA RICA

Agreement	Article	Date of notification
Agreement on the Application of Sanitary and Phytosanitary Measures	Annex B, paragraph 10	27 January 1995
Agreement on Textiles and Clothing	Article 6.1 Articles 2.6 and 2.7(b)	1 March 1995 12 June 1995
Agreement on Technical Barriers to Trade	Articles 10.1 and 10.3	23 March 1995
Agreement on Trade-Related Investment Measures	Article 5.1	3 April 1995
Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade 1994	Article 16.4 Article 18.5	24 February 1995 15 March 1995
Agreement on Implementation of Article VII of the General Agreement on Tariffs and Trade 1994	Article 20.1 Article 20.2 Article 4 Article 5.2	17 January 1995 17 January 1995 17 January 1995 17 January 1995
Agreement on Preshipment Inspection	Article 5	23 March 1995
Agreement on Rules of Origin	Article 5.1	28 March 1995
Agreement on Import Licensing Procedures	Article 2.2 Footnote 5 Article 5 Article 8.2(b)	17 January 1995 1 March 1995 30 March 1995
Agreement on Subsidies and Countervailing Measures	Article 25.11 Article 32.6	24 February 1995 15 March 1995
Agreement on Safeguards	Article 12.7 Article 12.6	1 March 1995 15 March 1995
Understanding on the Interpretation of Article XVII of the General Agreement on Tariffs and Trade 1994	Articles 2 and 3	30 June 1995

Date: 13 July 1995.

TABLE 1

Tariff heading	Description	I.T.	F.T.	Period
0207.3990	Other (poultry cuts)	274.2	233.0	1995-2004
0207.4190	Other (chicken cuts)	274.2	233.0	1995-2004
04.01	Milk and cream, not concentrated nor containing added sugar or other sweetening matter	111.4	94.7	1995-2004
04.02	Milk and cream, concentrated, containing added sugar or other sweetening matter	111.4	94.7	1995-2004
04.03	Buttermilk and curdled cream, yoghurt, etc.	111.4	94.7	1995-2004
04.04	Whey	111.4	94.7	1995-2004
04.05	Butter and other fats	111.4	94.7	1995-2004
04.06*	Cheese and curd	111.4	94.7	1995-2004
1601.0020	Sausages and similar products	274.2	233.0	1995-2004
1602.1020	Of meat and poultry offal under heading 0105	274.2	233.0	1995-2004
1602.3900	Other preparations of fowls	274.2	233.0	1995-2004

*The following tariff headings have lower bound duties: 0406.2010, 0406.2090, 0406.4000 and 0406.9000.

I.T. Initial Tariff

F.T. Final Tariff

Source: Uruguay Round, Schedule LXXXV - Costa Rica.

TABLE IV.4

Status of CODESA Holding Companies, 1984-95

	Firm	Activity	Situation	
Agro-industry	AGROPALMITO	Palmetto processing	Sold	1986
	ALCOSA	Cotton processing	Liquidated	1993
	CATSA	Sugar production	Sold	1989
	CONSOLIDACION	Agro-industry	Liquidated	1988
	DAISA	Agro-industry	Liquidated	1991
	INGENIO GUANACASTE	Sugar production	Liquidated	1988

Fisheries	ACUACULTURA	Prawn farming	Liquidated	1993
	ATUNES DE COSTA RICA	Tuna fishing	Sold	1987
	ATUNES DEL PUERTO	Tuna fishing	Liquidated	1988

Light industry	AZUFREIRA GUANACASTE	Sulphate production	Liquidated	1980
	GUANACAL	Limestone extraction	Liquidated	1988
	PESCA ESCAMA	Fish products	Liquidated	1988
	PETROLAC	Oil industry	Liquidated	1988
	STABAPARI	Wood processing for construction purposes	Sold	1993
	SUBPRODUCTOS DEL CAFE	Coffee subproducts	Sold	1985
	TERRENOS DE ORO	Gold extraction	Sold	1987

Heavy industry	ALUNASA	Aluminium production	Sold	1987
	CEMPASA	Cement production	Sold	1994
	CEMVASA	Cement production	Liquidated	1991
	FERTICA	Fertilizer production	Sold	1994

Financial services	BOLSA NACIONAL DE VALORES	Stock exchange agency	Sold	1994
	PUESTO DE BOLSA	Stock exchange agency	Liquidated	1994

Trading	CONEXPO	Marketing goods abroad	Liquidated	1988
	DISCOCEM	Cement distribution	Liquidated	1984
	MACASA	Wood and finished products	Sold	1987
	MULTIFERT	Marketing fertilizers	Transfer to the public sector and liquidated	1987
	PANCAFE	Marketing coffee products	Liquidated	1987
	ZONA FRANCA	Operation of industrial zones	Transfer to the public sector	1986

Transport	FECOSA	Rail transport	Liquidated	1988
	LACSA	Air transport	Sold	1987
	NAMUCAR	Maritime transport	Transfer to the public sector and liquidated	1987
	SANSA	Air transport	Sold	1987
	TEMPISQUE FERRY BOAT	River transport	Liquidated	1991
	TRANACO	Air transport	Liquidated	1988
	TRANSMESA	Passenger transport	Transfer to the public sector	1986

Other services	CENTRO DE FERIAS	Fairs and conventions centre	Liquidated	1988
	FLEMAR	Maritime freight chartering	Liquidated	1987
	GUACAMAYA	Tourism	Liquidated	1988
	IMMOBILIARIAS TEMPORALES	Real estate	Liquidated	1991
	MINASA	Mining	Transfer to the public sector	1986
	SEDEMAT	Machinery and transport	Liquidated	1988

Source: Government of Costa Rica.

Main changes in State involvement in the Costa Rican economy, 1995, in relation to Table IV.5 of the Report by the Secretariat

A. Monopolies

<u>Goods</u> Fábrica Nacional de Licores (FANAL)	A draft law on elimination of the monopoly is being considered by the Legislative Assembly.
<u>Energy</u> Generation, transmission and distribution of electricity	Law No. 7508 of 9 May 1995 broadens the opportunities for private investment in the joint generation of electricity. It allows the establishment of Costa Rican enterprises with foreign capital of up to 65 per cent for the generation of up to 20 MW.
<u>Services</u> Banking Insurance	 The Legislative Assembly is discussing two draft laws on modernization and opening up of the financial sector. They are aimed at giving the Central Bank greater independence and allowing private banks to play a more important role in the Costa Rican banking market, allowing them access to the Central Bank's rediscount facilities and to accept current account deposits. The Legislative Assembly is considering two draft laws which will gradually open up the national insurance market and the National Insurance Institute, leading to privatization of the marketing of insurance and modernization of the Institute.
<u>Transport, ports</u> TRANSMESA	This is not an enterprise for passenger transport, but a still-functioning mechanism of a former subsidiary of CODESA that is being wound up.
<u>Entities without monopoly rights</u> Consejo Nacional de Producción (CNP)	In February 1995, the task of importing basic grains was transferred to the private sector. The CNP does not at present market grains; this task is carried out by the private sector.