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Costa Rica: A Nirvana for Export Manufacturers

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I. INTRODUCTION[1]

The Republic of Costa Rica enjoys a prime location for lucrative international trade. The Republic is the nearest stable democratic nation to the United States and Canada.[2] This is one of the reasons Costa Rican export manufacturers[3] can provide low cost products, on short notice, to North American importers.[4] Additionally, manufacturing facilities in Costa Rica have access to seaports on the Caribbean, Atlantic, and the Pacific Ocean.[5] Costa Rica's location and access to transcontinental shipping routes thus allow for the convenient exportation of manufactured goods to markets throughout the world.

In addition to its prized location, Costa Rica stands to benefit from its favorable trade relationships. On October 25, 1990, Costa Rica became the 100th member of the General Agreement on Tariffs and Trade (GATT).[6] Joining GATT ensures that Costa Rican products will receive favorable trade treatment from member

1. Ms. Louise Roysdon and Mrs. Susan Van Syckel, reference librarians at McGeorge School of Law, rendered valuable assistance in researching this comment.

2. Peagam, *Stability with Growth*, EUROMONEY 8, 9 (Costa Rica, A Tradition of Stability Supp. Mar. 1990) (LEXIS, Nexis library, Eurmon file).

3. Export manufacturers, as used in this comment, are those enterprises that apply some form of manufacturing process to produce tangible and transportable property which is either exported directly or utilized in the manufacture of articles to be exported. *See generally* 1 Taxation in Latin America (Int'l Bureau Fiscal Documentation) sec. C, ch. Costa Rica, § 10.04(d), at 40 (Mar. 1989) [hereinafter Int'l Bureau Fiscal Documentation] (describing the tax benefits that Costa Rica may grant to "exporters" or to "[p]roducers of merchandise used by an exporter").

4. COSTA RICAN-AMERICAN CHAMBER OF COMMERCE (AMCHAM), INVESTORS' GUIDE TO COSTA RICA 59 (3d rev. ed. 1989) [hereinafter AMCHAM, INVESTORS' GUIDE] (suggesting the manufacture of electronic products in nearby Costa Rica because U.S. electronics companies must meet tight schedules for parts).

5. *See* 1 W. DIAMOND & D. DIAMOND, TAX-FREE TRADE ZONES OF THE WORLD Costa Rica-5 (rel. April 1987) [hereinafter DIAMOND, TAX-FREE TRADE ZONES] (Railroads and highways connect, through San José, Costa Rica's Caribbean and Pacific coasts; this permits the transcontinental journey in only seven hours).

6. 43 Latin Am. Weekly Rep., Nov. 8, 1990, at 12, col. 2. *See* The General Agreement on Tariffs and Trade, *opened for signature* Oct. 30, 1947, 61 Stat. A3, A7, T.I.A.S. No. 1700, 55 U.N.T.S. 187. *See also GATT Takes Time Off from Tough Talks to Welcome 100th Member*, Reuters, Oct. 25, 1990 (LEXIS, Nexis library, Reuter file).

nations,[7] and obligates Costa Rica to grant member nations access to the Costa Rican market.[8] Furthermore, the U.S. grants liberal trade concessions to Costa Rica,[9] as do all industrialized nations.[10] Costa Rican products may enter major foreign markets under favorable trade terms.

Trends in U.S. trade policy make Costa Rica particularly attractive for Asian and European exporters.[11] In 1983, the U.S. unilaterally established a program of trade benefits for many countries located in the Caribbean and Central America.[12] Under this program, U.S. President Reagan proclaimed Costa Rica to be a "beneficiary country" of the program.[13] In August of 1990, the U.S. improved the trade benefits to these beneficiary countries.[14] Additionally, in November of 1990, the U.S. entered into a framework agreement with Costa Rica, to fulfill U.S. President Bush's vision of free trade between all countries in the Western

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7. Notice Requesting Public Comments on U.S. Negotiations with Costa Rica in the Context of the Accession of Costa Rica to the General Agreement on Tariffs and Trade (GATT), 53 Fed. Reg. 5072 (1988) ("Costa Rica will enjoy a multilateral guarantee of unconditional most favored nation treatment").

8. *See infra* note 115 (discussing Costa Rica's Protocol of Accession to GATT).

9. *See infra* notes 12-15 and accompanying text.

10. *See Comprehensive Review of the Generalized System of Preferences, Including Its Implementation, Maintenance, Improvement and Utilization: Report by the UNCTAD Secretariat*, 17 U.N. TDBOR Special Comm. on Preferences (Prov. Agenda Item 3) at 43, U.N. Doc. TD/B/C.5/130 (1990) (table showing 17 preference-giving countries as of Jan. 30, 1990); A. BORRMANN, C. BORRMANN, & M. STEGGER, THE EC'S GENERALIZED SYSTEM OF PREFERENCES 214 (1981) (table showing 15 preference-giving countries as of March 1, 1977).

11. *See generally* Millman, *Investing in Costa Rica*, CHRISTIAN SCI. MONITOR 9 (Dec. 7, 1989) (suggesting that Asian exporters use CBI beneficiary countries as a "duty-free trampoline" to the U.S. market because of growing U.S. protectionism against Asian-made products).

12. Caribbean Basin Economic Recovery Act (Caribbean Basin Initiative), Pub. L. No. 98-67, § 211, 97 Stat. 369, 384 (1983) [hereinafter CBI] (codified at 19 U.S.C. § 2701).

13. Presidential Proclamation Implementing the Caribbean Basin Economic Recovery Act, Proclamation No. 5133, 48 Fed. Reg. 54,453 (1983), *reprinted in* 9 INT'L TRADE REP.'S U.S. IMPORT WEEKLY (BNA) 402 (Dec. 7, 1983) [hereinafter Presidential Proclamation Implementing CBI].

14. CBI Center, Int'l Trade Admin., U.S. Dep't Comm., *CBI II Legislation Enacted*, 7 CBI BUS. BULL. 1 (Sep. 1990) [hereinafter CBI BUS. BULL.]. The *LA/C Business Bulletin* has replaced the *CBI Business Bulletin*. Latin Am./Caribbean Bus. Dev. Center, U.S. Agency Int'l Dev., U.S. Dep't Comm., *New Latin American/Caribbean Office Established at Commerce*, 1 LA/C BUS. BULL. 1 (Dec. 1990).

Hemisphere.[15] In sharp contrast, U.S. trade policies towards Asian countries have become increasingly protectionistic,[16] and U.S. trade policies with the European Economic Community are under much uncertainty.[17] These significant trade trends, and Costa Rica's favorable location, might be the reason Taiwan's government has agreed to finance in Costa Rica an industrial park exclusively for Chinese enterprises.[18]

The purpose of this comment is to survey laws that affect the economic costs and benefits of establishing export manufacturing facilities in Costa Rica.[19] The discussion in Part II considers whether foreign-owned manufacturing facilities in Costa Rica can feasibly produce internationally competitive products. By comparing Costa Rica's policies towards business with those of

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15. *United States, Costa Rica Sign Trade, Investment Agreement,* BNA Int'l Trade Daily (BNA) 7-8 (Nov. 30, 1990) (WESTLAW, BNA-BTD database). Bolivia, Chile, Colombia, Ecuador, Honduras, and Mexico also have signed framework agreements with the U.S. *Id.* at 9. Canada and the U.S. concluded a free trade agreement in 1988. *See* United States-Canada Free-Trade Agreement Implementation Act of 1988, Pub. L. No. 100-449, 102 Stat. 1851 [hereinafter U.S.-Canada Free-Trade Agreement].

16. *See, e.g.,* Comment, *The Next "Little Tiger": Manufacturing and Intellectual Property Rights in Thailand,* 3 TRANSNAT'L LAW. 275, 308 (1990) (The U.S. Generalized System of Preferences permits the U.S. President to deny trade benefits to certain countries or imports).

17. *See, e.g.,* Bello & Holmer, *Unilateral Action to Open Foreign Markets: The Mechanics of Retaliation Exercises,* 22 INT'L LAW. 1197, 1197 (1988) (The U.S. Trade Representative may increase import duties or place restrictions on imports, under Section 301 of the Trade Act of 1974, in response to "unfair foreign government practices"); Imposition of Increased Tariffs on Imports of Certain Articles, Proclamation No. 5601, 52 Fed. Reg. 2663, 23 WEEKLY COMP. PRES. DOC. 38 (Jan. 21, 1987) (increasing tariffs, pursuant to Section 301 of the Trade Act of 1974, on certain articles imported from the European Economic Community). *See generally* Palmeter, *Section 301: The Privatization of Retaliation,* 3 TRANSNAT'L LAW. 101, 102-03 (1990) (discussing the use, and potential abuse, of retaliatory measures to protect U.S. industries).

18. *See* Millman, *supra* note 11, at 9 (Taiwan will finance the "world's first all-Chinese industrial park outside of Asia"). BES Engineering Corp., a Taiwanese government-run enterprise, acquired 32 hectares in Alajuela, near San José's Juan Santamaría International Airport. *ROC's BES Official Visiting Costa Rica,* Central News Agency, Nov. 14, 1990 (LEXIS, Nexis library, Cenews file). One hectare equals ten-thousand square meters (approximately 2.47 U.S. acres). *Metric System Table,* WEBSTER'S THIRD NEW INTERNATIONAL DICTIONARY OF THE ENGLISH LANGUAGE 1424 (unabridged 1981) [hereinafter WEBSTER'S THIRD NEW INT'L DICTIONARY].

19. *See generally* 1 T. REYNOLDS & A. FLORES, FOREIGN LAW: CURRENT SOURCES OF CODES AND BASIC LEGISLATION IN JURISDICTIONS OF THE WORLD, ch. Costa Rica (Am. Ass'n L. Libraries Publications Series No. 33, 1989) (providing a bibliography on Costa Rican Law).

South Korea,[20] this comment analyzes whether Costa Rica may attain similar economic achievements.[21] The analysis in Part III evaluates whether such facilities and their profits are secure from substantial disruptions and government intervention. The state of Costa Rica's economic, legal, and political environment permits affirmative conclusions to these issues. In Part IV, a comparison of U.S. trade laws determines whether Costa Rican products may enter the U.S. market under favorable trade terms.[22] This comparison suggests that the U.S. extends its most favorable benefits to Costa Rica. Thus, Costa Rica can be considered a nirvana for export manufacturers.[23]

20. South Korea (the Republic of Korea) was selected for comparison because it has achieved its status as a "newly industrialized nation," amazingly, without the economic benefit of having substantial natural resources. *See* Krueger, *The Experience and Lessons of Asia's Super Exporters*, in EXPORT-ORIENTED DEVELOPMENT STRATEGIES 191 (1985) (It was assumed, in the 1950s, that South Korea, with "one of the worst resource endowments per capita in the world," would be unable to sustain economic growth). Also, similar to Costa Rica, South Korea had problems with high inflation rates, and relied heavily on foreign aid and exports of raw materials to finance its imports. *See id.* at 191-92 (South Korea's annual inflation rate was 25% in the mid-1950s, and the U.S. decided to gradually reduce its aid to South Korea, when 88% of Korea's exports consisted of raw materials). Furthermore, the South Korean government sponsored KOTRA to promote Korean products through a worldwide network of offices. Watanabe, *Exports and Employment: The Case of the Republic of Korea*, 106 INT'L LAB. REV. 495, 523 (1972). Similarly, CINDE, a nonprofit organization, has offices throughout the world to promote investment in Costa Rica, while the government, through CENPRO, coordinates investment and export promotion. AMCHAM, INVESTORS' GUIDE, *supra* note 4, at 96-99.

21. *See Introduction*, in EXPORT-ORIENTED DEVELOPMENT STRATEGIES 2 (1985) (Developing countries are faced with problems that are similar to those faced by South Korea, Taiwan, Singapore, and Hong Kong in the 1950s and 1960s); Kim, *Korea in the 1990s: Making the Transition to a Developed Economy*, 16 World Dev. 7, 7 (Jan. 1988) (South Korea has emerged as a newly industrialized nation due to its rapid growth over the last quarter of a century).

22. Although, all industrialized nations grant Costa Rican products preferential tariff schedules (frequently denoted as a Generalized System of Preferences), this comment analyzes only U.S. trade concessions to Costa Rica. *See supra* note 10 and accompanying text (noting countries which grant trade concessions to Costa Rica).

23. Nirvana is "a place or state of rest, harmony, or pleasure." WEBSTER'S THIRD NEW INT'L DICTIONARY, *supra* note 18, at 1530. Nirvana may also be "a goal hoped for but *apparently unattainable.*" *Id.* (emphasis added).

II. POTENTIAL TO MANUFACTURE INTERNATIONALLY COMPETITIVE PRODUCTS

Costa Rica has a strategic location with accessible shipping routes. Costa Rica, in Central America, lies between Nicaragua and Panama[24] and is situated on a narrow peninsula that permits maritime access to both the Pacific and Atlantic Oceans.[25] Manufacturing facilities located in Costa Rica's Central Valley[26] have access to seaports on both coasts via well-connected highways and railroads.[27] Such facilities may also utilize the five cargo airlines that serve Juan Santamaría International Airport, the nation's main airport.[28] Thus, Costa Rican-made products can be shipped directly and conveniently to the world's major markets.

Foreigners usually find communication with Costa Rican nationals and the government feasible. Costa Rica's official language is Spanish, according to its Constitution.[29] Therefore, Costa Rican enterprises must maintain their documents in that language.[30] However, translations to Spanish from English, and

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24. CARIBBEAN/CENTRAL AMERICAN ACTION, C/CAA'S 1989 CARIBBEAN AND CENTRAL AMERICAN DATABOOK 91 (1988) [hereinafter C/CAA'S DATABOOK].

25. AMCHAM, INVESTORS' GUIDE, *supra* note 4, at 11.

26. The provinces of Alajuela, Cartago, Heredia, and San José comprise the Central Valley (also referred to as the Central Provinces). COSTA RICA NATIONAL TOURIST BUREAU, COSTA RICA GENERAL INFORMATION 9 (no date). The Central Valley's moderate climate, with a mean average temperature of 21° Centigrade (70° Fahrenheit), has attracted 64.4% of the Republic's population. *Id.* at 13.

27. 1 DIAMOND, TAX-FREE TRADE ZONES, *supra* note 5, at Costa Rica-5. By railroad, the distance between the City of San José (in the center of Costa Rica) and the Pacific Ocean shipping facilities in Puntarenas is 77 miles (116 kilometers), and the Caribbean Sea shipping facilities in Limón is 111 miles (168 kilometers). AMCHAM, INVESTORS' GUIDE, *supra* note 4, at 14 (citing the Ministry of Industry, Energy and Mines Consulting Department (Dec. 1985)).

28. AMCHAM, INVESTORS' GUIDE, *supra* note 4, at 19. Juan Santamaría International Airport also maintains twelve international passenger airlines. *Id.*

29. COSTA RICA CONST. art. 76 (added by Law No. 5703 (June 6, 1975)), in 4 A. BLAUSTEIN & G. FLANZ, CONSTITUTIONS OF THE WORLD ch. Costa Rica, at 14 (1981).

30. M. LANGER, PRACTICAL INTERNATIONAL TAX PLANNING 68-2 (3d ed. 1985 & rel. 4, Nov. 1989). For example, accounting records must be written in Spanish. 26 COMMERCIAL LAWS OF THE WORLD Costa Rica 49 (rev. Dec. 1985) (translating COD. COM. art. 254, Law No. 3284 of 1964) [*Commercial Laws of the World* is published for members of the Foreign Tax Law Association by Foreign Tax Law Publishers Inc., P.O. Box 2189, Ormond Beach, Florida 32175 U.S.A.]. And only a "legally authorized accountant" may be "responsible for the contents of the books." *Id.* (translating CÓD. COM. art. 253, Law No. 3284 of 1964).

other major languages, are easy to obtain,[31] and many urban dwellers speak English.[32] Furthermore, Costa Rica boasts an adult literacy rate of 93%.[33] This permits almost all nationals to read procedure manuals and document essential information. Thus, most foreign companies should be able to maintain their organizational records in Spanish, where required, and to adequately communicate with Costa Rican employees.

Costa Rica meets several of the prerequisites to successfully export manufactured products. Economic studies demonstrate six basic factors leading to a successful export economy [hereinafter Export Success Factors]: (1) periodic adjustments of the exchange rate for inflation; (2) access to the international market for necessary purchases, at competitive prices, with minimal bureaucratic complexity; (3) the labor market responds to market forces, free of intervention; (4) a modern infrastructure for worldwide transportation and communication; (5) minimal government intervention with regard to the quantity and variety of imported and exported products; and (6) the government's undivided commitment to "export-oriented strategies."[34] An analysis of these factors provides the information necessary to conclude that Costa Rica has great potential for success in exporting.

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31. M. LANGER, *supra* note 30, at 68-2.

32. AMCHAM, INVESTORS' GUIDE, *supra* note 4, at 12. Costa Rican's are "affectionately" referred to as "Ticos." COSTA RICA NATIONAL TOURIST BUREAU, *supra* note 26, at 6.

33. BUREAU PUB. AFF., U.S. DEP'T ST., BACKGROUND NOTES: COSTA RICA 1 (1989) (Superintendent Doc. S1.123: C.82/989, U.S. Doc. 844-00210261-8).

34. Krueger, *supra* note 20, at 207-08 (listing "eight prerequisites for a successful outward-oriented strategy."). Similar prerequisites were consolidated, as follows: prerequisite numbers one with two (commitment to profitable exports), and four with eight (non-intervention). "Export-oriented strategies focus on the promotion of industries that orient a substantial part of their production to foreign markets." Amado, *Free Industrial Zones: Law and Industrial Development in the New International Division of Labor*, 11 U. PA. J. INT'L BUS. L. 81, 82 n.2 (1989). Contrast this with import substitution, a policy of promoting the domestic production of goods that had previously been imported. *Id.* at 93. "Promotion" often consists of trade protection in the form of import tariffs. *See id.* at 82 n.2.

A. Economic Panorama

"Conditions in Costa Rica are conducive to export expansion,"[35] but Costa Rica's present economic difficulties may inhibit its growth.[36] Costa Rica presently faces a high inflation rate[37] and onerous government deficits;[38] and Costa Rica's international creditors[39] have become anxious to see both conditions quickly dealt with.[40] Costa Rican President Calderón has proposed new taxes, large increases in public sector charges, and a temporary adjustment of the official exchange rate of U.S. dollars.[41] Unfortunately, President Calderón's plan to reduce the government's deficit has incited a public outcry, even from the local clergy.[42] Economic forecasters predict that higher import prices will prevent a decline in the inflation rate.[43] Despite these conditions, forecasters predict that exports will expand rapidly, which shall sustain Costa Rica's economic growth.[44]

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35. Fields, *Employment and Economic Growth in Costa Rica*, 16 WORLD DEV. 1493, 1506 (1988) (referring to Costa Rica's labor force and policies, political stability, and incentive to export created by the U.S.'s CBI).

36. Economist Intelligence Unit, *Nicaragua, Costa Rica, Panama Country Report*, No. 4, 10 (1990).

37. 36 Latin Am. Weekly Rep., Sep. 20, 1990, at 10, col. 1 (Costa Rica's inflation rate for the twelve-month period ending July 1990 was 19.5%). The 1990 inflation rate was about 25%. Facsimile transmission from Karla Ceciliano to *The Transnational Lawyer* (Feb. 25, 1991) [hereinafter K. Ceciliano, Facsimile] (copy on file at the office of *The Transnational Lawyer*). Karla Ceciliano, at the American Business Dep't of C & C Consultores S.A., an affiliate of Coopers & Lybrand International, in San José, Costa Rica, provided valuable research assistance.

38. 36 Latin Am. Weekly Rep., Sep. 20, 1990, at 10, col. 1 (Costa Rica's fiscal deficit may reach as high as 2% of Gross Domestic Product). Large decreases in appropriations from U.S. AID should make the government's deficit even more difficult to narrow. *Id.*

39. These international creditors include the International Monetary Fund, the World Bank, and the Japanese government. *Id.*

40. *Id.* This is in addition to pressure from large decreases in appropriations from U.S. AID. *Id.* The austerity measures of the plan have caused a public outcry, especially from the poor. *Id.*

41. *Id.* Other schemes that are almost ready to be implemented include the privatization of certain state-run enterprises, and the further liberalization of banking regulations. *Id.*

42. *Id.*

43. Economist Intelligence Unit, *supra* note 36, at 10 ("[F]uel prices adjustments and currency devaluation will still keep inflation in double digits.").

44. *Id.* (In real terms, Gross Domestic Product [hereinafter GDP] should remain at 2% and real exports, which account for 34% of GDP, should "expand rapidly.").

The Costa Rican government maintains, in real terms, the exchange rate between the Costa Rican colón and the U.S. dollar.[45] This policy has significance to foreign investors because it prevents the devaluation of Costa Rican property relative to the world market. Costa Rica's Central Bank employs "periodic mini-devaluations" to adjust the exchange rate in light of the domestic inflation rate and the rate of inflation abroad.[46] President Calderón's deficit reduction plan implements more mini-devaluations.[47] Similarly, South Korea utilized small and frequent exchange rate adjustments to maintain the purchasing power of the South Korean won against other currencies.[48] Costa Rica protects its currency from the impact of domestic inflation, which meets the first Export Success Factor.[49]

Political stability in Costa Rica has contributed significantly towards its economic growth. In 1982, all of the Central American countries experienced a decline in their Gross Domestic Product.[50] Since 1982, Costa Rica has been the only Central American country to recover with strong investment levels and consistent economic growth.[51] Situated within a region cursed by political volatility, Costa Rica, paradoxically, exhibits little political

45. The official exchange rate was 92.75 colones to the U.S. dollar, compared with 95 colones to the U.S. dollar on the black market. *Central American Economic Briefing*, 13 CARIBBEAN INSIGHT 15 (Sep. 1990).

46. *Country Reports on Economic Policy and Trade Practices*, HOUSE COMM. ON FOREIGN AFF. 671, at 673, H 382-10 (1989) [hereinafter HOUSE, *Country Reports*] (Superintendent Doc. Y4.F76/1:C83/3). However, the colón's strength against the dollar has been attributed, in part, to the narcotics trade through Costa Rica. *Central American Economic Briefing*, *supra* note 45, at 15 ("Without cocaine dollars, analysts believe the black market rate would shoot up, putting pressure on the authorities to increase the scale of mini-devaluations.").

47. Economist Intelligence Unit, *supra* note 36, at 22.

48. *See* Krueger, *supra* note 20, at 193.

49. *See supra* note 34 and accompanying text.

50. Lindenberg, *Central America's Elusive Economic Recovery*, 16 WORLD DEV. 237, 239 (1988) (table showing that Costa Rica, Honduras, Guatemala, El Salvador, and Nicaragua all had "negative GDP growth" in 1982).

51. *Id.* at 238-40 (Both Costa Rica and Honduras, by 1986, had demonstrated a weak economic recovery, but Costa Rica did recover to its precrisis levels of investment and fiscal deficit, whereas Honduras did not). El Salvador, Panama, and Guatemala "showed erratic growth" while "Nicaragua has shown continued marked deterioration." *Id.* at 238.

turmoil.[52] In part, this distinction from other Central American countries has led to divergent economic results.[53] Costa Rica's economy has benefitted from the nation's political stability.

Lowering all trade restrictions between member countries of the Central American Common Market [hereinafter CACM] should greatly benefit Costa Rica.[54] Costa Rica enjoys a trade surplus with CACM countries.[55] Central American economic officials predict the elimination of "all trade barriers" between their countries (referred to as "economic integration") by 1992.[56] Integration of the Central American economies would reduce the cost of obtaining materials available within the region. This renewed thrust towards economic integration is the region's "response to U.S. President Bush's 'Enterprise for the Americas' initiative."[57] The external stimulus of free trade with the U.S.,

52. M. LANGER, *supra* note 30, at 68-2. *See infra* notes 215-235 and accompanying text (describing the political situation in Costa Rica).

53. Fields, *supra* note 35, at 1506.

54. Parties to the General Treaty on Central American Economic Integration, signed in the early 1960s, are Costa Rica, El Salvador, Guatemala, Honduras, and Nicaragua. Weisenfeld, *Introduction and Bibliography to the General Treaty on Central American Economic Integration* (1989) (WESTLAW, IEL database, V-C document).

55. Costa Rica's trade results with member states of the CACM are as follows (in millions of U.S. dollars):

	Exports from Costa Rica			Imports to Costa Rica		
	1983	1986	1989	1983	1986	1989
El Salvador	41.6	28.9	46.6	29.7	33.8	44.3
Guatemala	88.5	37.2	60.1	59.4	61.3	74.4
Honduras	27.2	22.7	15.2	11.0	5.9	3.1
Nicaragua	40.9	11.6	23.4	20.2	5.3	16.9

International Monetary Fund, DIRECTION OF TRADE STATISTICS YEARBOOK 143 (Aug. 1990).

56. N.Y. Times, Aug. 3, 1990, § D, at 11, col. 6 (city ed.). Integration of the Central American economies, as proposed, entails free trade between the member countries, possibly, lower tariffs to non-member countries. *Discussion by Costa Rican Minister of Trade, Roberto Rojas, on President Bush's Latin American Trade Initiative* (Aug. 3, 1990), *printed in* Fed. News Service, Aug. 3, 1990, at 2 (LEXIS, Nexis library, Fednew file). Attempts to achieve economic integration in the region began in the nineteenth century, after independence from Spain. Weisenfeld, *supra* note 54.

57. *Id. See supra* note 15 (listing nations that have signed framework agreements with the United States. Also, the region has pending a free trade agreement with Mexico. *International Trade, Mexico, Central American Countries Plan Free Trade Agreement to be Reached by 1996*, Daily Report for Executives, Jan. 15, 1991, at A-3 (LEXIS, Nexis library, Drexec file).

and the internal benefits that would accrue from the elimination of trade barriers between Central American countries, make economic integration likely. Economic integration would permit manufacturers to obtain materials at a lower cost (furthering the second Export Success Factor) and Costa Rican products would be more competitive in Central American markets.[58]

B. Labor

Employment in Costa Rica has expanded. Costa Rica maintains "one of the lowest [unemployment] rates in the developing world."[59] This is partly due to light manufacturing industries, which have created better-paying jobs in Costa Rica.[60] The robust Costa Rican economy has kept the unemployment rate at low levels.

1. Labor Standards

"Reasonable" labor policies ensure that workers receive minimum wages, overtime pay, and social benefits.[61] The Costa Rican Constitution and Labor Code secure minimum wages[62] and

58. *See supra* note 34 and accompanying text.

59. AM. EMBASSY SAN JOSÉ, BUREAU INT'L LAB. AFF., U.S. DEP'T LAB., FOREIGN LABOR TRENDS: COSTA RICA 4 (1988-89) [hereinafter AM. EMBASSY SAN JOSÉ] (Superintendent Doc. L29.16: C.82/988-89, U.S. Doc. 829-003-00132-1) (In 1987 and 1988, the Costa Rican unemployment rate was only 5.6%). The economy created enough new jobs to keep pace with a growing supply of labor. Fields, *supra* note 35, at 1506.

60. 2 W. DIAMOND & D. DIAMOND, TAX HAVENS OF THE WORLD Costa Rica-20 (rel. May 1988) [hereinafter DIAMOND, TAX HAVENS] (Light manufacturing industries employed only 16% of Costa Rica's one million workers, but contributed 22% to Costa Rica's gross national product). *See* Fields, *supra* note 35, at 1507 (table showing that manufacturers employed 12% of the work force in 1963, and 16% in 1984).

61. Fields, *supra* note 35, at 1506.

62. Selected minimum wages, effective January 1, 1991, in U.S. dollars, are as follows: $6.60 per day for unskilled laborers and $7.17 for office workers; $226 per month for secretaries, $298 for executive secretaries; and $220 per month for assistant accountants, $270 for private accountants. Decree No. 20067-TSS, published in *La Gaceta* on Nov. 23, 1990 (D. Blum trans.). *See supra* note 45 (Costa Rica's official exchange rate is approximately 93 colones to the U.S. dollar).

labor standards.[63] Supervised laborers must be paid for overtime hours worked at 150% of the employee's regular hourly wage rate.[64] Specific criteria exist for determining when overtime hours accrue.[65] Furthermore, employers must pay payroll taxes[66] and disability insurance for work-related accidents.[67] Employers also must pay for six official holidays and two weeks of vacation per year,[68] and a Christmas bonus of one month's salary.[69] Costa Rican labor policies and required benefits increase labor costs.[70]

The Labor Code prohibits employment discrimination. Employers may not discriminate on the basis of age, gender,[71] or

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63. *See generally* ZÜRCHER, SR., H.J. ZÜRCHER, JR., E. MONTOYA-ZÜRCHER, & E. ZÜRCHER, A STATEMENT OF THE LAWS OF COSTA RICA IN MATTERS AFFECTING BUSINESS 149-50 (General Legal Division, General Secretariat, Organization of American States trans. (5th ed. 1978)) [hereinafter ZÜRCHER]. Labor Code provisions that specifically apply to agricultural and other nonmanufacturing industries are beyond the scope of this comment.

64. *Id.* at 149.

65. Typically, the standard work day is eight hours and the standard work week is forty eight hours. *Id.* at 151 (Daytime workers may have longer regular hours than night-time workers). Overtime must also be paid for labor "which exceeds a shorter workday agreed upon by contract." *Id.* Regardless of overtime pay, employees must be given one day of rest for every six consecutive days of work, unless the employee agrees to work the seventh consecutive day. *Id.*

66. Payroll taxes equal 22% of gross wages. C. Ceciliano, *Costa Rica*, in INTERNATIONAL TAX SUMMARIES C-69, C-72 (1990) [available from Coopers & Lybrand Int'l Tax Network]; K. Ceciliano, Facsimile, *supra* note 37; AMCHAM, INVESTORS' GUIDE, *supra* note 4, at 182. *Cf.* 1 Int'l Bureau Fiscal Documentation, *supra* note 3, Gen. Info., part B(c), at v (Employers must contribute 23.75% for social security and other compulsory welfare charges).

67. Worker disability insurance payments range from 2% to 5% of gross wages, depending upon the industry and the employee's duties. Telephone interview with Karla Ceciliano, at the American Business Dep't of C & C Consultores S.A., an affiliate of Coopers & Lybrand International, in San José, Costa Rica (Mar. 5, 1991) [hereinafter K. Ceciliano, Interview]. Employers must pay 2.75% of gross salaries, on average. C. Ceciliano, *Costa Rica*, *supra* note 66, at C-72. *Cf.* AMCHAM, INVESTORS' GUIDE, *supra* note 4, at 182 (Employers must contribute 3.75% of gross salary for Occupational Hazard Insurance).

68. ZÜRCHER, *supra* note 63, at 152-53 (Accrued vacation pay equals one day for each month of employment). *Accord* AMCHAM, INVESTORS' GUIDE, *supra* note 4, at 92. An employer may not demand that work be performed on legal holidays, which include Sundays. *Id.* at 151. ZÜRCHER, *supra*, at 152.

69. AMCHAM, INVESTORS' GUIDE, *supra* note 4, at 182. Employers also must pay employees sick leave, maternity leave, and severance pay after adequate notice of dismissal unless the termination was for a good cause. *Id.* at 92-93.

70. *See* Yelpaala, *In Search of Effective Policies for Foreign Direct Investment: Alternatives to Tax Incentive Policies*, 7 NW. J. INT'L L. & BUS. 208, 231 (1985).

71. Also forbidden is dismissal due to pregnancy. ZÜRCHER, *supra* note 63, at 154. *See supra* note 69 (Employers are responsible for maternity leave benefits).

nationality--equal wages must be paid for equal work.[72] However, women and children may work only certain hours and duties.[73] Limiting women and children to specific work conditions makes it easier, in most instances, to hire men. Favoring male employees for this reason alone would likely constitute illegal gender discrimination. Costa Rica's protection of women, children, and minority groups from employment discrimination tends to increase employment costs.[74]

Despite these antidiscrimination laws, Costa Rica advocates mild employment discrimination against foreigners. Employers "should" prefer nationals over foreigners "under equal conditions" of employment.[75] The Costa Rican Labor Code sets quotas based on the total number of employees and on the total compensation paid.[76] Foreign managers are not subject to the compensation quota.[77] However, foreign managers typically demand higher salaries than their Costa Rican counterparts.[78] Therefore, rational foreign investors are unlikely to hire foreign employees if qualified workers and managers are available domestically.[79] Though domestic laws favor nationals for employment, the higher cost of foreign employees is likely, more

72. ZÜRCHER, *supra* note 63, at 154.

73. *Id.* at 155-56.

74. *See* Yelpaala, *The Impact of Industrial Legislation on the Behavior of Multinational Enterprises and Labor in the Industrializing Countries of the East and Southeast Asia*, 6 MICH. Y.B. INT'L LEGAL STUD. 383, 404 (1984) [hereinafter Yelpaala, *Impact of Industrial Legislation*] (South Korean employers pay women a fraction of the wages paid to men).

75. ZÜRCHER, *supra* note 63, at 150.

76. AMCHAM, INVESTORS' GUIDE, *supra* note 4, at 91 (Foreign employees may not comprise more than 10% of an enterprise's total number of employees, and may not be paid more than 15% of an enterprise's total payroll in any year).

77. Salaries of managers and administrators are excluded from the 15% payroll restriction if no more than two foreigners are employed at any one management level. *Id.* The 15% payroll restriction can be avoided by having more management levels. The number quota can be avoided only by employing more nationals because foreign managers are included in the ratio of foreign employees.

78. The government has no maximum salary or wage rates that an enterprise may pay. However, employers may not deduct from taxable income an employee's salary or wages in excess of three times the minimum wage rate. 1 Int'l Bureau Fiscal Documentation, *supra* note 3, § 2.09(g), at 9.

79. An increasing number of Costa Ricans are in higher educational categories and have professional, technical, and managerial skills. Fields, *supra* note 35, at 1506.

than quotas, to deter rational foreign investors from hiring foreign employees for Costa Rican operations.

2. *Labor Policies Interfere with Free Market Forces*

Economists attribute the abundance of well educated and highly motivated Korean workers[80] to South Korea's success in obtaining a significant share of the world market in certain products.[81] The abundant supply of labor in South Korea in the 1960s spurred labor-intensive exports.[82] Most notably, the literacy rate reached 90% in the 1960s, and the workers were "strongly motivated to work diligently."[83] In a given period of time, literate and motivated workers can produce more articles than illiterate or poorly motivated workers. Thus, workers need less time to produce each article, which means greater worker productivity.[84] This gave South Korea a comparative advantage[85] over other countries, particularly in industries that utilize unskilled labor.[86] South Korea's comparative advantage permits manufacturers located there to produce certain goods inexpensively.[87]

Importantly, South Korea enjoyed a free labor market. Labor unions were not permitted to push for goals that workers normally desire, such as compensation increases and employment safety.[88] Also, the government did not burden employers with minimum

80. Park, *Labor Issues in Korea's Future*, 16 WORLD DEV. 99, 99 (1988) (citing KIM & PARK, SOURCES OF ECONOMIC GROWTH IN KOREA: 1963-1982 (1985)).

81. Petri, *Korea's Export Niche: Origins and Prospects*, 16 WORLD DEV. 47, 47 (1988).

82. Park, *supra* note 80, at 99.

83. *Id.*

84. Labor, to attract foreign investment, must be both cheap and efficient. Yelpaala, *supra* note 70, at 232.

85. "According to the law of comparative advantage, a country trading with another country must export those goods in which, comparatively, it has the lowest production costs and [it] must import those goods in which, comparatively, it has a disadvantage." Amado, *supra* note 34, at 89-90. Under the factor-allocation theorem, countries will have a comparative advantage in the goods that "use their more abundant factors of production . . . more intensively." *Id.* at 90.

86. Petri, *supra* note 81, at 49.

87. *Id.* at 47.

88. *See* Yelpaala, *supra* note 70, at 231 (citing Yelpaala, *Impact of Industrial Legislation*, *supra* note 74) (South Korea and other Asian countries have laws in their export-free zones that maintain "tight control" over worker conduct, such as labor unions and strikes).

wages or mandatory social benefits, such as a general retirement scheme.[89] Minimal intervention with free market forces[90] permitted a "match" between labor-intensive industries and South Korea's labor advantage.[91] A significant factor in South Korea's success is inexpensive labor, resulting from a freely operating labor market.

In sharp contrast, Costa Rica's labor policies intervene in the labor market. Minimum wage laws prevent the lower end of the labor market from efficiently responding, as the South Korean market did, to market forces.[92] Mandatory fringe benefits and overtime laws also inhibit the free function of market forces; to a lesser degree, so do anti-discrimination laws. Costa Rica's labor policy of intervention breaches the third Export Success Factor.[93]

However, these protections, in theory, could induce greater productivity. For example, South Korean employers determine rate of pay based solely on the "worker's level of formal education and sex, with little weight to the job content."[94] One economist, referring to higher labor costs and to international competition, expects this method of remuneration to change and to become more closely linked with individual performance and job content,[95] as in Costa Rica. Industries that entail substantial labor (so-called labor-intensive industries) may find that greater worker productivity allows workers who earn higher wages to produce goods at a lower

89. *See* Krueger, *supra* note 20, at 201-02. The first time that the South Korean government considered a minimum wage law or general pension scheme was in 1988. Park, *supra* note 80, at 110 (Both changes are being introduced gradually because of the increase in labor costs that results).

90. Krueger, *supra* note 20, at 201-02 (In all four of the Asian super-export countries, labor unions were not able to "use monopoly power" over the labor market, and government intervention in the labor market was limited).

91. *See* Petri, *supra* note 81, at 48-49 (Low tariff protection prevented serious distortions in the economy, thus South Korean exporters could match their comparative advantage in unskilled labor to the appropriate industries).

92. *See* Krueger, *supra* note 20, at 201-02.

93. *See supra* note 34 and accompanying text.

94. Park, *supra* note 80, at 111.

95. *Id.*

per unit cost.[96] Costa Rica's labor laws intervene in the labor market and elevate wage rates, but these laws may result in a lower cost per unit if they stimulate worker productivity.[97]

Also, U.S. trade concessions require worker protections in beneficiary countries. U.S. trade benefits to developing countries stipulate minimum worker rights protection as a prerequisite[98] for trade preferences.[99] Higher labor costs from worker protection may be a trade-off for duty-free entry to the U.S. market.

C. Infrastructure and Natural Resources

Costa Rica has a modern infrastructure that can meet the demands of industry and foreign management. Both coasts have large commercial seaports that are well-connected to the Central Valley by railroads and highways.[100] The main airport, near San José, accepts the largest airplanes and several regional airports accept airplanes that are almost as large.[101] The country's vast hydroelectric resources produce the greatest installed electric power

96. "Low-wage muscle is no longer much of a competitive advantage in the emerging world economy." Toffler, *Economic 'Fast World' vs. 'Slow World'*, San Francisco Chron., Jan. 23, 1991, § Briefing, at 1, col. 1 (Contra Costa ed.). *See supra* notes 84-87 and accompanying text (discussing productivity and comparative advantage). A similar analysis should also be applicable for industries that require skills or literate operators.

97. *See* Fields, *supra* note 35, at 1508.

98. The worker rights requirement was used in 1990 to deny trade benefits to the Republic of Liberia, for its failure to take steps to provide worker rights. 55 Fed. Reg. 19,692 (Office U.S. Trade Rep. 1990). Furthermore, the U.S. President's "1990 Annual Review" will assess whether the U.S. should withdraw trade benefits under the GSP from Benin, the Dominican Republic, Haiti, Nepal, and Syria. *Id.* The Dominican Republic is the only CBI beneficiary that has imported to the U.S. more "CBI-Eligible, Nontraditional Goods" than Costa Rica. P. WHITNEY, FIVE YEARS OF THE CARIBBEAN BASIN INITIATIVE 3 (1990) (statistical data provided by the U.S. Department of Commerce) (published by the U.S. Dep't State, Bureau Pub. Aff., Superintendent Doc. S 1-71/4:1241).

99. 7 CBI BUS. BULL., *supra* note 14, at 1 (CBI beneficiaries must "conform to internationally recognized standards for worker rights"). *See* Customs and Trade Act of 1990, Pub. L. No. 101-382, § 213, 104 Stat. 629, 656 [hereinafter Customs and Trade Act of 1990] (amending 19 U.S.C. 2702) (CBI beneficiaries must take steps to provide its laborers with worker rights as defined in § 502(a)(4) of the Trade Act of 1974).

100. 1 DIAMOND, TAX-FREE TRADE ZONES, *supra* note 5, at Costa Rica-5.

101. AMCHAM, INVESTORS' GUIDE, *supra* note 4, at 19. *See supra* note 28 and accompanying text (describing the available facilities at the main airport).

capacity in Central America at inexpensive rates.[102] Additionally, Costa Rica's modern telecommunications system features facsimile and high-speed data transmissions, and direct dialing to the U.S., Europe, and Japan.[103] These facts meet the fourth Export Success Factor.[104] Thus, Costa Rica's infrastructure permits low production costs and provides efficient shipping and modern communication facilities.

In addition to its agricultural products--especially bananas and coffee--[105] and the wide variety of timber and plants derived from the country's fertile soils, Costa Rica possesses the raw materials for many manufactured products.[106] Costa Rica's mineral wealth includes gold, diatomite,[107] sulphur, and gibbsitic bauxite.[108] These resources are scheduled for development by private companies in the early 1990s.[109] Costa Rica yields substantial natural resources for commercial applications.

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102. 2 DIAMOND, TAX HAVENS, *supra* note 60, at Costa Rica-21 to -22. Hydroelectric facilities provide 99% of the nation's electricity needs. AMCHAM, INVESTORS' GUIDE, *supra* note 4, at 19, 173. Basic electrical service provide 110 volts of alternating current, the standard for U.S. appliances. COSTA RICA NATIONAL TOURIST BUREAU, *supra* note 26, at 7.

103. AMCHAM, INVESTORS' GUIDE, *supra* note 4, at 19, 173.

104. *See supra* note 34 and accompanying text.

105. Costa Rica's largest exports, in decreasing order of value, are: coffee (U.S. $286 million), bananas (U.S. $276 million), and beef (U.S. $49 million). Economist Intelligence Unit, *supra* note 36, at 5.

106. *See generally* AMCHAM, INVESTORS' GUIDE, *supra* note 4, at 51 (table listing investment opportunities available in Costa Rica).

107. Diatomite, which denotes "well hardened" sedimentary rock from microscopic plant fossils, finds its principal use in industrial filtration systems that process beverages, chemicals, oils, and solvents. 4 THE NEW ENCYCLOPAEDIA BRITANNICA, MICROPAEDIA 69 (15th ed. 1985) [hereinafter ENCYCLOPAEDIA BRITANNICA] (explaining "diatom" and "diatomaceous earth").

108. Notholt, *Costa Rica*, in MINING ANN. REV., MINING J. 64 (1990) (The gibbsitic bauxite contains 35% aluminate) (LEXIS, Nexis library, Minrev file). Gibbsitic bauxite may be used to produce aluminum. *Bauxite*, 1 ENCYCLOPAEDIA BRITANNICA, *supra* note 107, at 973 (Bauxite's aluminum oxide content makes it "the principal ore of aluminum."); *Gibbsite*, 5 ENCYCLOPAEDIA BRITANNICA, *supra*, at 252 (Gibbsite, contained in bauxite, may be synthesized from bauxite to produce aluminum in metal or chemical form). Subject to the findings of recent oil exploration, Costa Rica may also have oil reserves. 1 Int'l Bureau Fiscal Documentation, *supra* note 3, Gen. Info., part B(b), at iv.

109. Notholt, *supra* note 108, at 64.

D. Trade Restrictions and Tariffs

Several restrictions apply to trade with Costa Rica, but duties are generally not imposed on articles imported by export enterprises.[110] Merchandise, with a value greater than U.S. $500, imported from outside Central America must be preregistered before the Central Bank will authorize the foreign exchange to pay for the articles.[111] The minor restrictions over imports, including quotas, shall be reduced as part of Costa Rica's ascension into GATT.[112] The government does not impose nonfiscal restrictions on exports.[113] Having few trade restrictions, Costa Rica meets the fifth Export Success Factor.[114]

Costa Rica levies duties on both imports and exports. Costa Rica imposes a one percent tariff on imported materials and capital goods, and exported manufactured products.[115] However, until October 1996, the government will exempt from import duties and

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110. Costa Rica's only import restriction prohibits articles from South Africa. 1 Int'l Trade Rep. Export Reference Manual (BNA) 40:15 (May 2, 1990) [hereinafter Export Reference Manual]. However, imports from outside of Central America or Panama, obtained through barter transactions, require a barter license. *Id.*

111. 1 Int'l Bureau Fiscal Documentation, *supra* note 3, Gen. Info., part A(c), at iii. The importer, in addition, must either have an industrial contract with the Ministry of Economy, Industry and Commerce (MEIC) or import authorization from MEIC and the Ministry of Finance. *Id. See infra* note 157 (describing the eligibility requirements under the Industrial Promotion Law).

112. Reuters, Oct. 25, 1990 (BC cycle) (LEXIS, Nexis library, Reuter file).

113. *See* 1 Int'l Bureau Fiscal Documentation, *supra* note 3, Gen. Info., part A(c), at iii ("Except for export duties levied on certain commodities . . . ," Costa Rica has "no special export restrictions").

114. *See supra* note 34 and accompanying text.

115. 1 Int'l Bureau Fiscal Documentation, *supra* note 3, § 8.06, at 34, § 8.07, at 34-35 (citing Executive Decree No. 16,572-H-MEIM, Official Gazette of Oct. 10, 1985) (Costa Rica demands import surcharges of up to 200% value on certain other products). Costa Rica has promised, as part of its GATT ascension, to limit its import tariffs to 60%, and to eliminate import surcharges, except on cars, which are presently 400%. *GATT Takes Time Off From Tough Talks to Welcome 100th Member*, *supra* note 6, at 12, col. 2. However, almost all of Costa Rica's import duties and surcharges are below the agreed upon GATT levels. *Id.* Generally, no import duties are imposed on Central American products. 1 Export Reference Manual, *supra* note 110, at 40:14 (citing the CACM treaty and a free-trade agreement with Honduras as controlling authority). Natural products of the region may move freely between CACM-member countries, exempt from import and export duties, and most other import taxes, duties and charges. *Id.* at 40:13. But manufactured articles, exported within Central America, are subject to an export tax of 4.5%, in addition to the 1% export tariff. 1 Int'l Bureau Fiscal Documentation, *supra* note 3, § 8.07, at 35.

surcharges imported materials to be used in nontraditional exports;[116] imports to enterprises in free trade zones are exempt from duties indefinitely.[117] Significantly, materials that will be re-exported to non-CACM countries are exempt from both export and import duties.[118] The drawback system exempts from tariffs imported materials used to produce articles for export.[119] This allows export manufacturers to obtain needed inputs on the world market at competitive prices.[120] Hence, Costa Rica meets part of the second Export Success Factor.[121] Export manufacturers may import inputs free of export and import duties and import surcharges.

However, drawback systems make tariff relief cumbersome to obtain.[122] Costa Rica, like South Korea, offers a drawback system.[123] In addition, South Korea provides relatively low trade protections to its manufacturers,[124] which indicates South Korea's commitment to stimulating exports, rather than to import substitution.[125] Presently, Costa Rica's high tariffs[126] encourage

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116. 1 Int'l Bureau Fiscal Documentation, *supra* note 3, § 10.04(d), at 40 (citing Executive Decree No. 16,572-H-MEIM, Official Gazette of Oct. 10, 1985) (The benefits are granted, for twelve years beginning in 1984, to imported articles that are not domestically produced). An application must be filed with the Dirección General de Hacienda for import duty and surcharge exemptions. *Id.* § 10.04(d), at i (Supp. Sept. 1990).

117. 1 Int'l Bureau Fiscal Documentation, *supra* note 3, § 10.04(h), at 42 (Materials are exempt from duties if used in articles to be re-exported). *Accord* 1 Export Reference Manual, *supra* note 110, at 40:35 (All materials and equipment "necessary for the enterprise's operations and export activities" receive duty and tax exemptions).

118. 1 Export Reference Manual, *supra* note 110, at 40:35 (This applies to goods that enter Costa Rica without being declared, otherwise import duties will not be refunded and the products will also be subject to export duties). A re-export declaration must be attached to the corresponding bill of lading or airway bill for a different carrier to be used for departure. *Id.*

119. Costa Rica's drawback system is called the temporary admission system. *See, e.g.,* AMCHAM, INVESTORS' GUIDE, *supra* note 4, at 40.

120. Kim, *supra* note 21, at 60 (The drawback system permits exporters to "offset the disincentive effect" of import duties to be competitive on the world market).

121. *See supra* note 34 and accompanying text (Costa Rica meets the part of the second Export Success Factor that favors purchases at worldwide market prices).

122. *See* Krueger, *supra* note 20, at 208.

123. Kim, *supra* note 21, at 60.

124. Petri, *supra* note 81, at 48-49.

125. *See supra* note 34 (defining import substitution). *See also* de Melo, *Sources of Growth and Structural Change in the Republic of Korea and Taiwan: Some Comparisons,* in EXPORT-ORIENTED DEVELOPMENT STRATEGIES 243 (1985) (South Korea and Taiwan only pursued "import substitution" for a short period of time). Costa Rica, in contrast, pursued an import substitution strategy in the

import substitution.[127] Exemptions for exporters encourage exports.[128] Thus, by eliminating tariffs and trade surcharges, Costa Rica would signal its commitment solely to exports, rather than import substitution.[129] Until Costa Rica liberalizes its trade policies, it will not fully comply with the second Export Success Factor.[130] Export manufacturers, who are willing to encounter bureaucratic complexities, may obtain relief from tariffs.

E. Organization Ownership and Formation

Foreign nonresident companies and individuals may own, wholly or in part, Costa Rican export enterprises.[131] Aliens have the same rights as nationals to operate any legitimate business in Costa Rica.[132] Companies organized in accordance with Costa Rica's Commercial Code, and foreign companies manufacturing goods within the country, are considered Costa Rican merchants

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1960s and early 1970s. Fields, *supra* note 35, at 1494; AMCHAM, INVESTORS' GUIDE, *supra* note 4, at 24. Costa Rica's policies are now export-oriented, but there still exists substantial benefits for businesses that permit import substitution. *See, e.g.*, 1 Int'l Bureau Fiscal Documentation, *supra* note 3, § 10.04(j), at 43 (The Industrial Promotion Law grants "industrial" incentives to enterprises that produce goods to meet the "needs of Costa Rica's development." But, the ability to generate a net surplus of foreign currency is essential to qualify for benefits).

126. *See supra* note 115 and accompanying text (describing such tariffs).

127. *See supra* note 115 and accompanying text (Heavy import surcharges and tariffs are imposed on certain articles).

128. *See supra* note 34 and accompanying text (Countries must promote their export industries to succeed in exporting).

129. This follows since all products, regardless of their origin, would compete on an equal basis. Also, eliminating tariffs and trade surcharges would eliminate the need for a drawback system, with its cumbersome procedures.

130. *See supra* note 34 and accompanying text.

131. *See generally* 1 Int'l Bureau Fiscal Documentation, *supra* note 3, Gen. Info., part D(b), at vi (Only "communication enterprises . . . must be 100% Costa Rican-owned."); AMCHAM, INVESTORS' GUIDE, *supra* note 4, at 38 (Only nationals may invest in media and customs brokerage enterprises). Foreign-owned companies and branches may provide international news to Costa Rican enterprises. 1 Int'l Bureau Fiscal Documentation, *supra* note 3, § 5.09(c), at 21 (Such establishments are rebuttably presumed to be subject to a 30% tax of the gross receipts).

132. Pacheco, *Foreign Investment in Costa Rica: The Legal Framework*, 3 LAW. OF THE AMERICAS 246, 248 (1971) (The Costa Rican Constitution, at article 19, "grants aliens the same rights as nationals, except for political rights"). However, article 19 allows for exceptions by law. COSTA RICA CONST. art. 19, in 4 A. BLAUSTEIN & G. FLANZ, *supra* note 29, at 6.

and may perform commercial transactions there.[133] Thus, foreign investors may conduct business transactions and wholly own businesses in Costa Rica.

Several different types of business entities are available to conduct business activities; the most widely established type is the stock corporation.[134] "Costa Rican corporations are comparatively inexpensive to form and to maintain."[135] The three basic procedures to create a business entity,[136] such as a corporation, are as follows: (1) A Costa Rican Notary Public must execute a charter containing the organization's essential information; (2) a summary of the charter must be published in the official newspaper, *La Gaceta*; and (3) the charter must be registered with the appropriate agencies, including the Mercantile Section of the Public Registry.[137] Costa Rica makes forming business entities inexpensive.

Alternatively, foreign enterprises may conduct business in Costa Rica using their "existing corporate structures" to avoid creating a separate legal entity.[138] A foreign company may establish a

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133. 26 COMMERCIAL LAWS OF THE WORLD, ch. Costa Rica, at 2 (rev. Dec. 1985) [hereinafter COMMERCIAL LAWS] (translating CÓD. COM. art. 5, Law No. 3284 of 1964). This collection of commercial laws was published for members of the Foreign Tax Law Association, Inc., by Foreign Tax Law Publishers, Inc., P.O. Box 2189, Ormond Beach, Florida 32175 U.S.A. Foreign individuals may not engage in commerce in Costa Rica until they have permanently resided there for 10 years. *Id.* at 3 (translating CÓD. COM. art. 8, Law No. 3284 of 1964).

134. *E.g.*, 1 Int'l Bureau Fiscal Documentation, *supra* note 3, Gen. Info., part C(a), at v ("Partnerships have become an uncommon type of business organization."); Pacheco, *supra* note 132, at 249; AMCHAM, INVESTORS' GUIDE, *supra* note 4, at 119. The stock corporation is known as the *Sociedad Anónima*, which may be abbreviated "S.A."

135. M. LANGER, *supra* note 30, at 68-8. The incorporation process requires at least three weeks. *Id.* at 68-5. *But cf.* ARTHUR ANDERSEN & CO., CARIBBEAN BASIN . . . A TAX TOUR 20 (1985) (Corporate registration can usually be completed within two weeks).

136. Many sources of Costa Rican Law refer to a legally established business entity as a commercial company. *E.g.*, 26 COMMERCIAL LAWS, *supra* note 133, at 5 (translating CÓD. COM. art. 18, Law No. 3284 of 1964); ZÜRCHER, *supra* note 63, at 19. *Cf.* Pacheco, *supra* note 132, at 251 (referring to a juristic person).

137. Pacheco, *supra* note 132, at 251. *See* 1 Int'l Bureau Fiscal Documentation, *supra* note 3, Gen. Info., part C(b), at v (listing three procedures that must be performed "to incorporate a legal entity").

138. Pacheco, *supra* note 132, at 250.

"branch" to conduct Costa Rican business transactions.[139] To establish a branch, a foreign company must appoint a legal representative, in whom the company has vested broad power to conduct all types of transactions on behalf of the branch.[140] A foreign company can easily establish a branch or separate company in Costa Rica. Conducting business, either as a separate entity or as a foreign branch, gives foreign-owned companies great flexibility. The ease of forming a legitimate business in Costa Rica helps keeps the cost of exporting low, thus assisting to establish the sixth Export Success Factor.[141]

F. Income Taxes[142]

Export manufacturers, who fail to qualify for income tax exemptions or credits during their initial years, otherwise pay a tax on net income. All entities are subject to a 30% tax on the profits[143] they derive from income earned in Costa Rica.[144]

139. 26 COMMERCIAL LAWS, *supra* note 133, at 2 (translating CÓD. COM. art. 5(d)). A foreign company may also transact business through commercial agents or representatives but these are primarily individuals or legal entities that are appointed solely to buy and sell products, rather than conduct manufacturing operations. *See id.* at 70-73 (translating CÓD. COM. ch. VI & VII).

140. *Id.* at 42 (translating COD. COM. art. 225).

141. *See supra* note 34 and accompanying text.

142. Sales, imports, and services are subject to a value added tax; however, exports are exempt from the tax, and a tax credit is available for purchased goods that are physically incorporated into or directly used to produce the exported product. 1 Int'l Bureau Fiscal Documentation, *supra* note 3, § 8.02(a), at 31. Nonexport sales in Costa Rica are also subject to an excise tax, but manufacturers that include the purchased goods in their product may receive a full credit or be exempt from the tax. *Id.* § 8.04, at 33. Municipalities levy a 3% transfer tax and an annual 12% property tax on the value of immovable property, which consists of land, improvements, structures, and any equipment necessary for the operation of an existing business. *Id.* § 7.03, at 27-28, § 7.06, at 28-29 (The immovable property tax is actually 45,000 colones plus 12% of the parcel value that exceeds 1,000,000 colones). Manufacturing facilities may be partially exempt from the immovable property tax. *Id.* § 10.04(j), at 43 (Such exemptions, which may not exceed 50% of the tax, may be granted for up to ten years, depending the on the product's Costa Rican value content and its ability to generate a surplus of "foreign currency proceeds from exports in excess of foreign currency expenses.").

143. Profit generally equals gross receipts derived from Costa Rican sources, less related and necessary business expenses, and less other lawful deductions. *Id.* § 2.09, at 7-8. Payments to nonresidents for related and necessary business expenses, such as directors' fees and royalties, may be deducted, if the proper income tax has been withheld at the source. *Id.* § 2.09(g), at 8-9. However, only insurance premiums that are paid to the National Insurance Institute or "other authorized institution" may be deducted. *Id.* at 8. By law, the government-owned National Insurance Institute

Since the income tax only applies to domestic activity, income earned by foreign owners will not be taxed twice.[145] Foreign-owned entities pay income taxes of 30% on domestic profits.

1. Tax Benefits for Export Manufacturers

Costa Rica's tax concessions depend upon projected results for proposed operations and negotiations with government authorities. Export manufacturers of nontraditional products[146] receive tax benefits depending upon the export contract[147] agreed to by the

(Instituto Nacional de Seguros or INS) monopolizes insurance underwriting in Costa Rica. AMCHAM, INVESTORS' GUIDE, *supra* note 4, at 90. INS, one of the largest insurance companies in Latin America, reinsures much of its risk with large international companies such as Lloyds of London. *Id.*

144. 1 Int'l Bureau Fiscal Documentation, *supra* note 3, §§ 2.01, 2.03(a), at 5, § 2.06(a), at 6. However, individuals must pay income tax on dividends received from a Costa Rican company, even if that company's income was from non-Costa Rican sources. *Id.* § 6.01(b), at 23.

145. *Id.* § 11.02, at 47 (The situation in which a country taxes income earned outside of its territory is known as double taxation). However, unlike Costa Rica, foreign countries may impose a tax on income or other distributions that are received from Costa Rica because it has not entered into any tax treaties. *Id.* § 11.04. The tax administration may resolve such double-taxation problems by exempting the business from remittance taxes. *Id.* § 11.02 (The foreign tax authority must issue a certificate that shows the Costa Rican income reported, and the reasons this income was not fully deductible or the Costa Rican income tax not fully credited). *Id.* A tax has never been imposed on income from sources outside of Costa Rica. M. LANGER, *supra* note 30, at 68-1. This makes Costa Rica a potential tax haven for domestic corporations that earn all of their income from abroad. *Id.* Costa Rica has a reputation as a tax haven. *E.g.*, 2 DIAMOND, TAX HAVENS, *supra* note 60, at Costa Rica-1 (But "Costa Rica's attraction as a tax haven has diminished because of a severe exchange shortage, heavy foreign debt" and Central American instability); Turro, *The 'War on Drugs' Is Causing U.S. to Increase Investigations of Tax Evasion Through Tax Havens*, 2 TAX NOTES INT'L 807, 808 (1990) (According to Jim Springer, senior counsel at the U.S. Department of Justice, Costa Rica fits within the category of tax havens that tax only local income). *Contra* M. LANGER, *supra* note 30, at 68-1 (Costa Rica has an advantage for tax avoidance by foreigners since it is not known as a tax haven).

146. Nontraditional products, for purposes of government promotion, are "coffee, bananas, tobacco, raw leather, beef, shrimp, wood, mineral ores, cattle, horses, and pigs." 1 Int'l Bureau Fiscal Documentation, *supra* note 3, Gen. Info., part A(b), at iii (The National Development Plan "considers of maximum importance" enterprises that produce or export nontraditional products, or that promote tourism).

147. An export contract coordinates the various incentives available to exporters, and governs the relationship between the National Investment Council and the exporter who becomes bound to the agreement for the duration of the contract. AMCHAM, INVESTORS' GUIDE, *supra* note 4, at 143. Applicants for export contracts must show that nontraditional products will be exported to non-CACM countries for the entire period of the contract. *Id.* An export contract lapses if products are not exported under it, without just cause, for more than a year. *Id.* at 144.

National Council of Investments.[148] Numerous tax benefits have been available for the past twenty years to operations that are believed to stimulate industrial investment[149] and generate foreign currency.[150] Tax benefits depend on projections that proposed operations will help the domestic economy.

The government grants tax benefits for eligible activities. Manufacturers of exported products to non-CACM countries are exempt from income taxes[151] until October 1996.[152] In addition, export manufacturers may receive a percentage of the invoice price[153] of products exported in the form of tax credit certificates (better known as "CATs").[154] CATs may be traded on the

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148. 1 Int'l Bureau Fiscal Documentation, *supra* note 3, § 10.04(d), at 40-41 (listing other documentation that must be filed to obtain tax benefits).

149. KLYNVELD PEAT MARWICK GOERDELER, TAXATION IN LATIN AMERICA 35 (1990) (available from the offices of KPMG Peat Marwick). *Accord* 1 Int'l Bureau Fiscal Documentation, *supra* note 3, Gen. Info., part A(b), at iii (For the last two decades, the government has actively promoted investment in Costa Rica).

150. *See* 1 Int'l Bureau Fiscal Documentation, *supra* note 3, § 10.04(j), at 43 (Benefits under the Industrial Promotion Law may be obtained by companies that generate a net surplus of foreign currency).

151. *Id.* § 10.04(d), at 40-41 (The exemption is limited to the tax on the profits derived from the production of such exports). *Accord* KLYNVELD PEAT MARWICK GOERDELER, *supra* note 149, at 35-36.

152. AMCHAM, INVESTORS' GUIDE, *supra* note 4, at 102. *Accord* 1 Int'l Bureau Fiscal Documentation, *supra* note 3, § 10.04(d), at 40 ("Several benefits are granted for 12 years" starting with the fiscal year beginning October 1983); KLYNVELD PEAT MARWICK GOERDELER, *supra* note 149, at 35-36 (Exporters receive 100% tax relief for twelve years beginning fiscal year 1984). No tax incentives have been proposed to take effect after 1996. K. Ceciliano, Facsimile, *supra* note 37. 1 W. DIAMOND & D. DIAMOND, CAPITAL FORMATION AND INVESTMENT INCENTIVES AROUND THE WORLD Costa Rica-15 (rel. Dec. 1988) [hereinafter DIAMOND, CAPITAL FORMATION]. *See* AMCHAM, INVESTORS' GUIDE, *supra*, at 144 (No export contract may extend beyond September 30, 1996).

153. *See* 1 DIAMOND, CAPITAL FORMATION, *supra* note 152, at Costa Rica-14.3 to -15 (CATs are granted to exporters for a percentage of the "F.O.B. value of exports"); AMCHAM, INVESTORS' GUIDE, *supra* note 4, at 143 (CATs are granted as a percentage of the "FOB value of the export sale."). *Accord* 1 Int'l Bureau Fiscal Documentation, *supra* note 3, § 10.04(d), at 41 (CATs are granted as a percentage of the "job value of exports"). F.O.B. represents "free on board some location," which refers to the invoice price, including delivery costs to the location, borne by the seller. BLACK'S LAW DICTIONARY 578 (5th ed. 1979).

154. AMCHAM, INVESTORS' GUIDE, *supra* note 4, at 143. "CATs" refers to Certificados de Abono Tributario. *Id.* at 86. Exported articles that have at least 35% of their total value from Costa Rican sources qualify towards CATs. K. Ceciliano, Facsimile, *supra* note 37. To obtain the highest CAT rates in any year, local content must be at least 55%. *Id.* (citing *Tabla de Porcentaje de Certificado de Abono Tributario por Valor Agregado Nacional y año* which lists CAT percentages from 1991 through 1996) (The maximum CAT rate is 12% in 1991; the maximum rate steadily decreases to 5% in 1996). The lowest minimum CAT rate is 3%, beginning in 1994. *Id.*

National Stock Exchange of Costa Rica or pledged to secure loans.[155] Free trade zone operations are fully exempt from income taxes during the initial six years of operation, then 50% exempt for the following four years.[156] Manufacturers may qualify, under the Industrial Promotion Law, for ten years of income tax credits based on eligible expenditures.[157] The Law also permits accelerated depreciation of Costa Rican-made capital goods.[158] Export manufacturers can achieve zero, or low, income tax liabilities for several years.

2. *Tax Benefits Compared*

The Industrial Promotion Law provides tax credits and accelerated depreciation. The credits encourage companies to incur certain expenditures that directly benefit the local economy.[159] Profits, however, may be lowest during the first few years of

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155. 1 DIAMOND, CAPITAL FORMATION, *supra* note 152, at Costa Rica-15. *Accord* AMCHAM, INVESTORS' GUIDE, *supra* note 4, at 84 (The national stock exchange, Bolsa Nacional de Valores, primarily handles short-term securities, including CATs).

156. 1 Int'l Bureau Fiscal Documentation, *supra* note 3, § 10.04(h), at 42. *E.g.*, 1 DIAMOND, TAX-FREE TRADE ZONES, *supra* note 5, at Costa Rica-17. *Accord* KLYNVELD PEAT MARWICK GOERDELER, *supra* note 149, at 36 (Free trade zone operations are exempt from all taxes for six years; this extends for another four years but the exemption on income tax is reduced by 50%). However, the tax exemption for free trade zone operations is not allowed to companies that can credit the Costa Rican income tax against taxes payable to their home country. 1 DIAMOND, TAX-FREE TRADE ZONES, *supra*, at Costa Rica-17. It appears that the restriction only affects foreign branches, since domestic entities normally cannot deduct income tax from taxes payable. *See* 1 Int'l Bureau Fiscal Documentation, *supra*, § 10.04(d), at 40.

157. 1 Int'l Bureau Fiscal Documentation, *supra* note 3, § 10.04(j), at 43-44 (noting that the law entered into force in 1986 and must be "thoroughly revised within ten years"). Tax credits represent a percentage of the enterprise's investments in, for example, production equipment, subsidies to employees for living accommodations, industrial research, and employee training. *Id.* The percentage is determined at the time the enterprise qualifies for benefits under the production contract signed by the Ministry of Industry, Energy and Mining. *Id.* The enterprise must produce goods that contain a high Costa Rican value, as determined for the industry sector, or generate a net surplus of foreign currency; a greater percentage is granted for enterprises that use inputs that originate in other Central American countries, or that locate operations in free trade zones or rural zones. *Id.* The unused portion of tax credits may be carried forward to future tax periods. *Id.* at 43.

158. *Id.* § 10.04(j) at 43 (Capital goods qualify for accelerated depreciation treatment if at least 30% of their value is derived from "Costa Rican inputs and resources").

159. *See supra* note 157 (describing eligible expenditures).

operation.[160] If the enterprise has no profits before the tax credits expire, this benefit becomes worthless. Similarly, depreciation, especially accelerated depreciation, typically holds little value to new companies because depreciation only has value to the extent that it reduces taxable income.[161] The Industrial Promotion Law holds little value for typical startup enterprises.

At first blush, enterprises in free trade zones receive the most valuable income tax benefits. Ten years of tax exemptions, six fully exempt years followed by four years of partial exemptions, might accumulate substantial savings. However, enterprises that are most profitable after the first ten years have passed receive little actual benefit.[162] Can there ever be "too much of a good thing?"[163] The tax exemptions to operations in free trade zones are most beneficial only if significant profits are expected during the first ten years.

CATs may confer greater value than tax exemptions. The Export Promotion Law grants CATs, which are transferable on the National Stock Exchange. The CAT percentage effectively increases the price the producer receives for each exported article at no cost to buyers. Unfortunately, this tax benefit expires in 1996. Companies with qualified exports before 1997 will earn valuable, transferable, benefits from CATs.

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160. The assumption that profits will be lowest, or nil, in the first few years of operation, is based on the hypothesis that depreciation of capital goods will be greatest in earlier years, that sales revenues increase over several years, and that total overhead costs are relatively constant. Alternatively, if profits were to accrue from the first year, operations may continue long after tax concessions terminate, which may affect investors that engage in long-term planning. Yelpaala, *supra* note 70, at 212 (Not all investors have only short-term profit motives). After all, "what is lost to-day may be won to-morrow." M. CERVANTES, THE HISTORY OF DON QUIXOTE DE LA MANCHA, pt. I, ch. 7 (J. Ormsby trans.), in 29 GREAT BOOKS OF THE WESTERN WORLD 16 (1952).

161. Unused business losses expire after three years from the year such losses were incurred. 1 Int'l Bureau Fiscal Documentation, *supra* note 3, § 2.09(k), at 10 (Business losses may be carried-forward for up to three years after the years such losses were sustained). However, new enterprises may carry-forward losses for five years. *Id.* (This exception is limited to losses incurred during the first five years, the three-year period applies to subsequent losses incurred).

162. *See supra* note 161 (Losses may be carried-forward for five years, at most).

163. W. SHAKESPEARE, AS YOU LIKE IT, act IV, scene I, in 26 GREAT BOOKS OF THE WESTERN WORLD 618 (1952).

The Costa Rican government uses income tax concessions to promote industrial investment.[164] Unless export manufacturers, before the expiration of related tax benefits, earn significant profits or export substantial amounts of qualified articles, such benefits will provide little or no value.[165] In almost all situations, the tax benefits to exporters arè substantially better than the benefits to encourage domestic manufacturers in general. This tends to support the sixth Export Success Factor because exports are substantially benefitted over import substitution.[166]

G. Potential Sources of Financing

Projects in Costa Rica may be financed through several programs. Costa Rica, in addition to having a stock exchange for equity and short term notes and certificates,[167] has financing available to export manufacturers. Under the Export Promotion Law, eligible enterprises that enter into an export contract[168] with the government may receive loans at a low rate of interest and with preferential terms.[169] The Industrial Promotion Law provides eligible enterprises[170] with priority status in obtaining credit from

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164. *See* Yelpaala, *supra* note 70, at 212 (A "spurious causal link" exists between tax rates and the process by which foreign direct investment is determined). *See also* Yelpaala, *The Efficacy of Tax Incentives Within the Framework of the Neoclassical Theory of Foreign Direct Investment: A Legislative Policy Analysis*, 19 TEX. INT'L L. J. 365, 395 (1984) ("[S]uccess in enticing foreign investment in the host country still depends" on the degree to which the foreign investor's home country taxes the income repatriated from the host country).

165. Therefore, investors should prepare income projections to determine the most valuable form of tax benefits under the circumstances.

166. *See supra* note 34 and accompanying text.

167. J. RAUNER, INT'L TRADE ADMIN., U.S. DEP'T COMM., CARIBBEAN BASIN FINANCING OPPORTUNITIES: A GUIDE TO FINANCING TRADE AND INVESTMENT IN CENTRAL AMERICA AND THE CARIBBEAN BASIN 46 (1990) [hereinafter J. RAUNER].

168. *See supra* note 147 (describing export contracts).

169. 1 Int'l Bureau Fiscal Documentation, *supra* note 3, § 10.04(d), at 41. Export projects may be financed through the Agriculture and Industrial Reactivation Fund (AIR), the Private Investment Corporation (PIC), and the program for the Financing of Nontraditional Exports (FOPEX). J. RAUNER, *supra* note 167, at 47-48; AMCHAM, INVESTORS' GUIDE, *supra* note 4, at 87-88.

170. *See supra* note 157 (noting the eligibility requirements under the Industrial Promotion Law).

both the Central Bank and commercial banks.[171] In contrast, South Korea granted exporters "access to rationed and heavily subsidized credit."[172] Unlike South Korea, Costa Rica does not "heavily subsidize" export financing. It is clear, though, that funds are available to finance export manufacturing projects in Costa Rica, and that some loans have favorable interest rates or repayment terms.

Several international organizations and foreign governmental agencies also may provide funding to a Costa Rican manufacturing facility. Such projects may qualify for financing with the Caribbean Project Development Facility (CPDF), the Inter-American Investment Corporation (IIC), or the International Finance Corporation (IFC).[173] Qualified applicants may obtain bilateral financing through the U.S.'s Caribbean Development Program or Overseas Private Investment Corporation (OPIC), the Commonwealth Development Corporation (CDC), the German Finance Company for Investments in Developing Countries (DEG), Denmark's Industrialization Fund for Developing Countries (IFU), or the Netherlands Development Finance Company (FMO). With this diverse range of financing programs, feasible projects should be able to obtain significant financing from outside sources.

Several financing programs are available to all foreign investors having qualified projects. CPDF facilitates financing of economically sound business projects.[174] Projects owned mostly by nationals of the host country are eligible for IIC financing.[175] New projects may receive up to 25% of the total project cost from

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171. 1 Int'l Bureau Fiscal Documentation, *supra* note 3, § 10.04(j), at 44. The Industrial Development Fund, FODEIN, provides loans of up to U.S. $2 million for 80% of the project costs, in colones, at 3.5% above the Costa Rican base rate. J. RAUNER, *supra* note 167, at 47. FODEIN loans have one minor disadvantage, any "imported materials must be purchased from World Bank member nations, Switzerland, or Taiwan." AMCHAM, INVESTORS' GUIDE, *supra* note 4, at 87-88.

172. Petri, *supra* note 81, at 48.

173. The Central American Bank for Economic Integration (CABIE) makes its funds available through the central banks of member nations, which include Costa Rica. J. RAUNER, *supra* note 167, at 23. CABEI funds are also channeled through AIR, FOPEX, and FODEIN. *Id. See supra* notes 169 and 171 (describing these programs).

174. J. RAUNER, *supra* note 167, at 22 (Eligible projects are "technically and economically solid" business proposals).

175. *Id.* at 26.

IFC, but only if other sources are not available with reasonable terms.[176] FMO may finance up to 50% of a project's total cost through equity or debt financing.[177] Thus, foreign investors can choose between several financing sources.

Investors from several industrialized nations may obtain financing through governmental agencies. The U.S., under its Caribbean Development Program,[178] "must finance," under section 936 of the U.S. Internal Revenue Code,[179] at least U.S. $100 million per year[180] towards "twin-plant[181] operations, various other investments, and development projects in CBI beneficiaries."[182] A U.S. government agency, OPIC, may extend direct loans to ventures that are commercially and financially sound, and that involve significant U.S. equity and management participation.[183] In addition, OPIC can provide equity financing.[184] CDC, with a mere "preference" for British sponsors or sponsors who reside in the host country, may contribute up to 25% in equity financing of manufacturing projects.[185] German

176. *Id.* at 27. Large loans, up to U.S. $100 million may be obtained, and terms may allow a four-year grace period. *Id.*

177. *Id.* at 7 (Though owned by the Dutch, FMO does not require Dutch participation in an otherwise eligible project).

178. *Id.*

179. I.R.C. § 936(d)(4)(D)(i) (RIA 1991). Section 936 loans are administered by the Economic Development Administration of Puerto Rico (FOMENTO), but loans may be obtained through eligible private financial institutions and, for Puerto Rican twin-plant projects, the Government Development Bank of Puerto Rico (GDB). LATIN AM./CARIBBEAN BUS. DEV. CENTER, U.S. DEP'T COMM., INT'L TRADE ADMIN., CARIBBEAN BASIN INITIATIVE 1991 GUIDEBOOK 20 (1990) [hereinafter CBI GUIDEBOOK].

180. Customs and Trade Act of 1990, *supra* note 99, § 227(a), at 661 (amending I.R.C. § 936(d)(4) (1986)).

181. One example of the "twin plant" concept is Merck, Sharpe and Dohme's new plant in Costa Rica, which Puerto Rico promoted, to process pharmaceuticals made in Puerto Rico. 134 CONG. REC. E2888-01 (extension of remarks Sept. 9, 1988) (statement of Hon. Jamie Fuster).

182. Address by Peter Whitney, Director of Regional Economic Policy for the Bureau of Inter-American Affairs, Inter-American Press Association, in Santo Domingo (Mar. 23, 1988), *reprinted in* The CBI: Important Incentives for Trade and Investment, Dep't St. Bull. (June 1988) (LEXIS, Genfed library, Dosbul file). Costa Rica, to qualify under the section 936 program, has signed a tax information exchange agreement with the United States. BNA Int'l Trade Daily (BNA) (Mar. 4, 1991) (The agreement became effective on February 12, 1991).

183. J. RAUNER, *supra* note 167, at 9; CBI GUIDEBOOK, *supra* note 179, at 13 (The venture's management must have a proven track record of success in similar fields).

184. *Id.* at 9 (OPIC's combined financing may not exceed 75% of the total project cost).

185. *Id.* at 11-12.

and European partners may obtain financing, mostly in the form of equity, from the DEG.[186] Danish participants may finance up to 25% of a project's total cost through IFU.[187] Though nationals of particular industrialized countries have other sources of financing manufacturing projects in Costa Rica, many financing programs do not have nationality requirements and private lending institutions need only be utilized as a last resort. This may improve the profitability of exporting, which furthers the sixth Export Success Factor.[188]

H. Technology Transfer Policies[189]

Costa Rican law, in order to fulfill its international obligations under conventions to which it has ascended, provides for civil remedies and criminal penalties against those who infringe upon Costa Rican-recognized patents or trademarks. Foreigners may receive favorable treatment under the Convention Establishing the World Intellectual Property Organization (WIPO)[190] and the Buenos Aires Convention of 1910.[191] In addition, the Costa Rican

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186. *Id.* at 14.

187. *Id.* at 15.

188. *See supra* note 34 and accompanying text.

189. A comprehensive analysis of technology transfer is not within the scope of this comment. Many papers comprehensively analyze this subject matter. *See, e.g.*, Yelpaala, *Third World Perspectives on Technology Transfer*, in LICENSING AGREEMENTS: PATENTS, KNOW-HOW, TRADE SECRETS AND SOFTWARE 196 (1988); Fiorito, *WIPO Experts Make Progress on Patent Harmonization Draft*, 41 Pat., Trademark & Copyright J. (BNA) No. 1013, at 231 (Jan. 10, 1991) (LEXIS, Bna library, Ptcjnl file) (comparing the WIPO Draft Treaty from the October 29, 1990, meeting of the WIPO Committee of Experts with the GATT negotiations on Trade-Related Aspects of Intellectual Property Rights (TRIPS)).

190. *Treaties (Status on January 1, 1990)*, 26 COPYRIGHT 1, 3 (Jan. 1990) [hereinafter COPYRIGHT] (Costa Rica joined WIPO on June 10, 1981). Costa Rica is a member of the Berne Union, but not the Paris Union.

191. TRADE ACTIVITIES, PATENTS THROUGHOUT THE WORLD C-43 (A. Jacobs ed.) (4th ed. & rel. Aug. 1990) [hereinafter PATENTS] (Buenos Aires is one of the Pan-American Conventions). Member countries of this convention are Bolivia, Brazil, Cuba, the Dominican Republic, Ecuador, Guatemala, Haiti, Honduras, Nicaragua, Paraguay, the United States, and Uruguay. *Id.* The full name of the Buenos Aires Convention is the Buenos Aires (Pan-American) Convention Relating to Patents, Designs and Industrial Models of August 20, 1910. *Id.* at App. B-388. Though beyond the scope of this article, Costa Rica has ascended to several conventions for the protection of copyrights and artistic works, as follows: the Berne Convention for the Protection of Literary and Artistic Works; International Convention for the Protection of Performers, Producers of Phonograms and Broadcasting

Constitution assures that inventors, producers, and merchants shall "temporarily enjoy exclusive ownership" of their intellectual property.[192] Registered patents and trademarks may be exploited by the owner or licensees, or assigned to third parties,[193] who may, during the registration period, oppose the registration by third parties, enjoin importation of violating articles,[194] obtain damages, and press charges for criminal violations.[195] Despite the available remedies and successful enforcement by the courts, some assert that public markets and reputable retail stores frequently sell counterfeit products.[196] Effective means exist to remedy patent and trademark infringement in Costa Rica.

Patents may span twelve years. Patents typically continue for twelve years from the date of the grant, and may not be extended.[197] Patents may be granted on inventions, and invention

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Organizations; Convention for the Protection of Producers of Phonograms Against Unauthorized Duplication of Their Phonograms; and the Universal Copyright Convention. 26 COPYRIGHT, *supra* note 190, at 6, 9, 10, 12.

192. COSTA RICA CONST. art. 47, in 4 A. BLAUSTEIN & G. FLANZ, *supra* note 29, at 10.

193. PATENTS, *supra* note 191, at C-41 (Patent assignments and licenses must be recorded to exercise rights against third parties); TRADE ACTIVITIES, TRADEMARKS THROUGHOUT THE WORLD C-43, C-44 (A. Jacobs ed.) (4th ed. rel. Aug. 1987) [hereinafter TRADEMARKS] (Trademark assignments and licenses must be recorded to exercise rights against third parties).

194. Patented articles, unless "domestic production does not meet market demand," may be enjoined from importation for commercial purposes after the Registry of Industrial Property has been notified that the patent is being exploited. PATENTS, *supra* note 191, at C-45. Articles having a registered trademark may be enjoined from importation unless they are produced within the Customs Union of the Central American countries. TRADEMARKS, *supra* note 193, at C-43. The Registry of Industrial Property may also be referred to as the patent office or the registry.

195. PATENTS, *supra* note 191, at C-44, C-46; TRADEMARKS, *supra* note 193, at C-42 to -44. Civil remedies entail a three-year statute of limitations. *Id.* at C-45. *Accord* ZÜRCHER, *supra* note 63, at 292 (Civil actions to enforce personal property rights have a three year statute of limitations). The limitations period begins to run from the date the action may recovered. *Id.* at 293.

196. HOUSE, *Country Reports*, *supra* note 46, at 681. The reason offered for the alleged widespread infringement is the lack of action by injured parties. *Id.* It is possible, however, that this report has incorrectly characterized products that may legally imitate foreign goods in Costa Rica. For example, possibly the alleged counterfeit products were not registered in Costa Rica or such registration has expired or lapsed. Foreign observers may have mistaken legal imitations for illegal counterfeits because the laws that such observers are familiar with may have longer registration periods or different requirements.

197. PATENTS, *supra* note 191, at C-45. Patents on "pharmaceuticals and therapeutic items, herbicides and pesticides, and processes for producing them, which are not manufactured in Costa Rica," qualify for a patent term of only one year. *Id.* at C-41 (Also, there must be a patent for the item in the home country and, if the item is for human use, it must be in use in the home country). Confirmation patents on inventions patented abroad are twelve years or the term remaining on the

improvements, that meet three requirements: novelty,[198] inventive level,[199] and industrial applicability.[200] Priority status, over similar inventions, is accorded to patent applications filed within six months of the filing in a member-country of the Buenos Aires Convention.[201] Patents remain in force so long as the annual maintenance fees are timely paid and the patent is exploited (worked) within four years from the filing date, or three years from the grant date, whichever is later.[202]

Trademarks, trade names, and slogans (collectively referred to as Marks) may be protected for an unlimited term. Trademark protection persists for ten years from the date of registration, renewable every ten years; trade name and slogan registration have an unlimited duration, so renewal is unnecessary.[203] Marks are governed by the Central American Treaty on Industrial Property.[204] Only registration of the Mark determines its ownership--the first applicant to register becomes that Mark's

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foreign patent, whichever is less. *Id.* at C-45.

198. Novelty requires that the invention not be disclosed or used anywhere in the world before filing the application. *Id.* at C-42. A product may still be patented if it has a foreign patent and there has been no public use in Costa Rica. *Id.* A product may also be patented if it was displayed at an official exhibition in Costa Rican and the patent filing occurs within six months of the exhibition's closing. *Id.*

199. Inventive level exists when the invention is not, to a person versed in the subject matter, an obvious derivation of existing technology. *Id.* at C-42.

200. PATENTS, *supra* note 191, at C-42. Industrial applicability considers whether the object can be produced or utilized by industry. *Id.* Within one year of the original patent, only the original patentee or recorded assignees may register patent improvements. *Id.* at C-41 to -42. Grants may be denied on inventions that are in litigation in the country of origin or that are detrimental to health, safety, public order, or morals. *Id.* at C-42.

201. *Id.* at C-42 to -43 (To receive priority status, reciprocity must exist with the country of origin). The Buenos Aires Convention specifies priority for at least one year. *Id.* at C-43.

202. *Id.* at C-44 to -45. Exploitation in either Costa Rica or any of the Central American countries, including Panama, qualifies as "working" and the Registry of Industrial Property must be notified when working begins. *Id.*

203. TRADEMARKS, *supra* note 193, at C-43 (The renewal application for trademark registration must be filed one year before expiration of the current registration). "Rights to a trade name or slogan terminate" either by judicial annulment or upon the "legal termination of the business." *Id.* at C-45. A Mark may be registered unless, among other things, the patent office deems it to be misleading, contrary to good taste and ethics, commonly used, a person's name, or that belong to a national or international organization. *Id.* at C-40 to -41.

204. *Id.* at C-40. The Treaty replaces the laws of member countries, Costa Rica, Guatemala, and Nicaragua. *Id.*

owner.[205] However, registration in any country that is a party to the Treaty gives the applicant priority for six months in the other member countries.[206]

Costa Rica has few restrictions on the transfer of technology. As evidenced from its patent laws, Costa Rica extends long-term patent protection to most articles; however, certain agricultural materials are only given a one-year patent, and pharmaceuticals for human consumption may receive a one-year patent if the items are currently patented and used in the home country.[207] Furthermore, so long as reciprocity exists with the applicant's country, foreigners enjoy the same level of patent protection as natives.[208] Foreigners are permitted to own equity in almost any activity.[209] Thus, without restrictions over technology transfers or property ownership, and with long-term patent protection for almost all goods except agricultural and human health products, Costa Rica provides a flexible environment for foreign technology.

Royalty payments to nonresidents are not explicitly limited, although payments may be restricted at the time foreign exchange is requested. Royalty payments on technology or Marks are not subject to limits.[210] But, to obtain foreign currency for royalty remittances, the licensing agreement must be submitted to the Central Bank, and the withholding tax computation must be "substantiated."[211] Twenty-five percent of the gross royalty

205. *Id.*

206. *Id.*

207. PATENTS, *supra* note 191, at C-41. *See supra* note 197 (describing limits on patents for pharmaceuticals). However, Costa Rica does not provide the minimum patent term of twenty years that WIPO may, in the future, require of member nations. Fiorito, *supra* note 189 (citing WIPO Committee of Experts, Draft Treaty, art. 22).

208. PATENTS, *supra* note 191, at C-41.

209. AMCHAM, INVESTORS' GUIDE, *supra* note 4, at 38 (The government prohibits the foreign control or ownership public utilities, insurance, demand deposits, hydrocarbon and radioactive mineral activities, airports, seaports, and the media).

210. 1 Int'l Bureau Fiscal Documentation, *supra* note 3, Gen. Info., part D(g), at vii.

211. *Id.* "Substantiated" means that the parties must have a signed contract, preferable one that is duly notarized. K. Ceciliano, Facsimile, *supra* note 37. Approval may be obtained on a licensing contract when the Export Contract is presented. *Id.* The present lack of currency has itself not resulted in denial of exchanges to pay royalties. *Id.* Royalties for each license contract may not exceed 10% of the sale price of the related product. K. Ceciliano, Interview, *supra* note 67.

payment must be withheld for taxes.[212] Thus, a waiting period may need to be endured to obtain the required foreign currency to pay royalties. But, because the 25% withholding tax is 5% below the regular Costa Rican tax on business profits, royalty payments may be a less costly means to repatriate profits than dividends.[213] Thus, Costa Rica's technology transfer policies further the sixth Export Success Factor.[214]

III. FOREIGN INVESTMENT RISKS FROM DISRUPTIONS AND GOVERNMENT INTERVENTION

A. Political Risks

Costa Rica's stable government makes the country a politically safe place for foreign investment. Costa Rica "is the longest standing democracy in Latin America"[215] and among the first democracies in the world.[216] Costa Rica held its first unrestricted election in 1889.[217] Only twice since 1889 has the democratic selection of a president been disrupted.[218] Not only have elections provided a new president every term, but the controlling political party frequently changes.[219] The present Constitution was promulgated as a result of Costa Rica's last disruption in 1948.[220] Costa Rica's stability minimizes the political risks to foreign investments.

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212. 1 Int'l Bureau Fiscal Documentation, *supra* note 3, § 6.09, at 24-25 (This form of withholding tax is called a "final withholding tax" on remittances). *See infra* note 250 (describing the effect of a "final witholding tax").

213. *See infra* notes 249-264 and accompanying text (comparing dividends with other methods to remit profits).

214. *See supra* note 34 and accompanying text.

215. Peagam, *supra* note 2, at 9.

216. Pacheco, *supra* note 132, at 246.

217. C/CAA'S DATABOOK, *supra* note 24, at 92.

218. *Id.*

219. Pacheco, *supra* note 132, at 246 (In the twenty-five years before Pacheco's article, the opposing party had consistently won the elections). *Id.* The most recent national election, on February 4, 1990, again was an orderly and peaceful transfer of power, when Rafael Angel Calderón was elected president. Economist Intelligence Unit, *supra* note 36, at 4.

220. C/CAA'S DATABOOK, *supra* note 24, at 92.

The rights of foreigners are closely guarded. The Costa Rican Constitution promotes peacefulness and protects human rights and property rights, without regard to nationality.[221] "The right to engage in any legitimate business is granted to nationals and foreigners alike, whether they be natural or juristic persons."[222] Foreigners merely may not vote, hold public office,[223] or intervene in Costa Rica's political affairs.[224] The property rights of foreigners are respected in Costa Rica.

With several notable exceptions, the government of Costa Rica is like that of the United States. Parallel to the U.S. form of government, Costa Rica's "political structure is based on Montesquieu's division of powers -- legislative, executive, and judicial,"[225] but several significant differences exist. The Constitution prohibits a national army.[226] The Costa Rican

221. "Article 45 of the Costa Rican Constitution stipulates that no property can be expropriated without previous, prompt and fair payment. Costa Rican law does not discriminate between nationals and foreigners in this regard. However, when dealing with land disputes, conflicts have taken a long time to resolve." HOUSE, *Country Reports*, *supra* note 46, at 678. The President of the United States recently investigated one allegation of uncompensated expropriation by Costa Rica; it was determined that the claim lacked any basis towards suspending or withdrawing Costa Rica's eligibility under the U.S. Generalized System of Preferences. 55 Fed. Reg. 19,692 (Office U.S. Trade Rep. 1990). However, the U.S. now claims that Costa Rica has expropriated, over a 25-year period, several properties which the U.S. maintains belong to U.S. citizens. *U.S. Withholds Aid to Costa Rica Over Expropriations*, Reuters, Feb. 14, 1991 (AM cycle) (LEXIS, Nexis library, Reuter file) (The U.S. is withholding $10 million in economic support funds because negotiations with the Costa Rican government were not progressing satisfactorily). The property includes an airstrip that "U.S. engineers built . . . for the resupply of Nicaraguan contra rebels in 1985"; squatters took over part of the property, the Costa Rican government took the rest for national parks and Indian reserves. *Id.*

222. Pacheco, *supra* note 132, at 248. "Article 21 of the Civil Code confirms th[is], in declaring that the law recognizes no difference between Costa Ricans and aliens with respect to the acquisition and enjoyment of civil rights." ZÜRCHER, *supra* note 63, at 17.

223. M. LANGER, *supra* note 30, at 68-3.

224. COSTA RICA CONST. art. 19, in 4 A. BLAUSTEIN & G. FLANZ, *supra* note 29, at 6.

225. Pacheco, *supra* note 132, at 246.

226. COSTA RICA CONST. art. 12, in 4 A. BLAUSTEIN & G. FLANZ, *supra* note 29, at 3 (Costa Rican national security relies on defense treaties; internal security depends on a 5,640-member Civil Guard, and a 3,235-member Rural Assistance Guard). As a result of regional terrorism, Costa Rica also has, since 1985, a 750 member anti-terrorist battalion. *Id.* The U.S. military may be used to defend Costa Rica. Costa Rica Defense Agreement, June 18, 1962, United States-Costa Rica, 13 U.S.T. 2094, T.I.A.S. No. 5167, 461 U.N.T.S. 155. Tangentially, zero military expenditures has helped the government towards resolving its budget deficit. *See* Peagam, *supra* note 2, at 9 (The available resources can be used, instead, for "economic and social development."). *See also* Economist Intelligence Unit, *supra* note 36, at 13 (Central America expends over U.S. $1 billion each year on troops and armaments).

president may hold office for only one four-year term, and may not actively participate in politics during his or her[227] tenure.[228] Fifty-seven deputies, elected to nonconsecutive four-year terms, comprise the legislative branch in one body.[229] All legislative decisions and executive measures must conform with the Constitution as determined by a two-thirds affirmative vote of the Supreme Court of Justice.[230] Costa Rican law resembles European Civil law,[231] but, unlike most civil law countries, Costa Rican judicial rulings do provide some basis for later court decisions.[232] As with the U.S., foreigners are reasonably assured that their rights will be protected from government intervention since the government has checks and balances to prevent dictatorship and rights violations.

Low income inequality and poverty levels also contribute to Costa Rica's stability. Income inequality and the percentage of poor have both fallen during Costa Rica's economic growth.[233] Observers attribute Costa Rica's stability to an influential middle class and few landless peasants.[234] A worldwide survey categorized Costa Rica as having a low level of "potential destabilisation," but a high level of "demographic pressure."[235] Despite considerable pressure on Costa Rica from a growing population and regional conflicts, it has remained politically stable.

227. "Margarita Peñón de Arias, wife of former President Oscar Arias, has announced that she will herself be running for the presidency in 1994." 43 Latin Am. Weekly Rep., Nov. 8, 1990, at 12, col. 2.

228. Pacheco, *supra* note 132, at 246.

229. ZÜRCHER, *supra* note 63, at 3. In contrast, the U.S. federal government has a bicameral legislature, the House of Representatives and the Senate, composed of 435 Representatives and 100 Senators, respectively. BLACK'S LAW DICTIONARY 666, 1221 (5th ed. 1979). *See id.* at 147 (Jeremy Bentham applied the term "bicameral system" to a legislative body that consists of two chambers, such as the U.S. Congress).

230. ZÜRCHER, *supra* note 63, at 3.

231. AMCHAM, INVESTORS' GUIDE, *supra* note 4, at 38.

232. 1 T. REYNOLDS & A. FLORES, *supra* note 19, at 3.

233. Fields, *supra* note 35, at 1506.

234. 2 DIAMOND, TAX HAVENS, *supra* note 60, at Costa Rica-17.

235. 36 Latin Am. Weekly Rep., Sept. 20, 1990, at 10, col. 2 (quoting Population Crisis Committee survey of 120 countries). In contrast, Nicaragua was "very high" in both survey categories, and only Venezuela had a lower rank than Costa Rica for potential destabilization. *Id.* Every other Latin American and Caribbean country that was reported, except Argentina, Jamaica, and Venezuela, received "moderate" or "high potential" destabilization levels. *Id.*

B. Labor Stability

In private enterprises, employees maintain good relations with management. *Solidarista* associations (which are essentially employee cooperatives) exist in over 90% of the facilities operated by multinational corporations in Costa Rica.[236] These associations are credited for greater communication and harmony in the work place.[237] In 1988, Standard Fruit reported that "they have been pleased with Solidarity associations that replaced communist labor unions in 1987."[238] Thus, *solidarista* associations have been a catalyst for harmony between workers and free enterprise.

Employers must provide some operating costs of *solidarista* associations. Operating costs of solidarity are funded by contributions from employees that range from five to ten percent of their salary, which the employer must match.[239] *Solidarista* associations strive to equip workers with education and leadership training, while also furnishing members with "low-cost credit . . ., building materials, clothing, food, and other personal [items] (dental, training-education, burials)."[240] "Companies with *solidarista* groups enjoy higher worker productivity and lower personnel turnover rates."[241] These benefits may directly offset the cost of *solidarista*.[242] Considering increased worker productivity and skills, the employer's cost for *solidarista* is minimal.

Solidarista members are unlikely to organize labor strikes. "Union leaders bitterly criticize *Solidarismo* as a bosses' union which fails to protect its workers or represent them adequately in

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236. Peagam, *supra* note 2, at 9.

237. *Id.*

238. AM. EMBASSY SAN JOSÉ, *supra* note 59, at 12.

239. AMCHAM, INVESTORS' GUIDE, *supra* note 4, at 93 (The rate is determined from negotiations between the solidarity association and company management).

240. *Id.* Employee-elected officers and solidarity management oversee the association's excess funds and investments, which may consist of significant equity positions in domestic companies to obtain a degree of company control. *Id.*

241. Peagam, *supra* note 2, at 9 (emphasis added).

242. Workers enjoy a higher standard of living from *solidarista* programs, this may provide an indirect benefit to employers since a lower wage may be adequate.

dealings with management."[243] The solidarity movement has a much greater portion of private sector workers than do labor unions, unions dominate the public sector.[244] As a result, 20% fewer strikes occurred in 1988 from 1987.[245] Significantly, no strikes occurred at U.S. firms in Costa Rica during 1988.[246] Few strikes against businesses give foreign investors a substantial reason to select Costa Rica as their location for manufacturing operations.

C. Repatriation of Profits to Foreign Owners

Most methods of transferring profits to foreign owners are subject to withholding taxes.[247] Foreign companies have several methods available to repatriate Costa Rican profits.[248] This comment scrutinizes payments of dividends, interest, royalties, service fees, and payments for imported materials as methods of repatriation. The analysis assumes that the enterprise pays income taxes under Costa Rica's normal 30% rate. However, if the entity has no income tax liability--either because of losses, tax exemption, or tax credits--the following analysis must be used selectively.

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243. AM. EMBASSY SAN JOSÉ, supra note 59, at 9 (emphasis added).

244. *Id.* at 6. Labor unions have a membership of approximately 154,000 Costa Ricans, 30% of the total work force, 60% of all public sector workers. *Id.* Labor unions, suffering from a poor public image and lower membership, have had a declining impact on the population. *Id.* at 1.

245. *Id.* at 9 (citing Ministry of Labor report (no date)).

246. *Id.* (citing AmCham). The strikes that did occur were usually brief, one-day, work slowdowns or strikes of government services which produced few significant concessions by the government to labor. *Id.* at 2 (Labor strikes only affected "airlines, taxi service, schools and universities, banks, the social security hospital system, customs, and municipal services in the coastal city of Limon and other sectors"). Only one violent protest occurred in 1988: "agricultural workers brandishing machetes and guns blocked major highways in a protest . . . which lasted several days." *Id.*

247. *See* 1 Int'l Bureau Fiscal Documentation, *supra* note 3, at 23 (table sumarizing withholding rates).

248. Due to Costa Rica's foreign exchange shortage, Costa Rica's Central Bank requires extensive documentation for all foreign exchange requests and such requests encounter delays of up to two months. K. Ceciliano, Interview, *supra* note 67. However, exporters registered with the Central Bank may obtain foreign currency for all payments abroad within 15 days. *Id.*

Dividend and profit distributions are subject to taxation before remittance abroad.[249] Such distributions to nonresidents are subject to a 15% "final withholding tax".[250] Companies operating in free trade zones are exempt from the dividend withholding tax for the first six years, and pay only 50% of the tax for the four years thereafter.[251] Alternatively, the tax administration may exempt dividends from withholding taxes if the recipient's country does not allow a tax credit or deduction for them.[252] Because profit distributions and dividends may not be deducted from Costa Rican income,[253] the 15% withholding tax combined with the 30% income tax,[254] makes Costa Rica's effective rate of taxation 40.5% of profits.[255] Repatriations characterized as dividends or profit distributions increases the rate of taxation.

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249. Also, before profits may be distributed, 5% of the annual profits must be placed in a "legal reserve account" until such account equals 10% of capital. 1 Int'l Bureau Fiscal Documentation, *supra* note 3, Gen. Info., part C(b), at v.

250. *Id.* § 6.07(a), at 24. Dividends are subject to a final withholding tax rate of only 5% if the stock was traded on "an officially recognized exchange." *Id.* A "final withholding tax" is a nonrefundable tax to be withheld at the source. K. Ceciliano, Facsimile, *supra* note 37. Foreign branches, instead, are taxed 15% of the disposable income, regardless of whether the profits are remitted abroad. 1 Int'l Bureau Fiscal Documentation, *supra* note 3, § 4.04(d), at 18. However, branch profits that are capitalized within Costa Rica are not subject to the 15% final tax. *Id.* (citing First Panel of the Administrative Tax Tribunal, ruling of Apr. 14, 1980). Disposable income includes taxable income, less income tax liability, plus exempt income (such as, nonhabitual capital gains and foreign-source income). *Id.* § 2.03(b), at 6.

251. 1 Int'l Bureau Fiscal Documentation, *supra* note 3, § 10.04(h), at 42 (citing Law No. 6,695 of 1981).

252. *Id.* § 11.02, at 47.

253. *Id.* § 2.09(h), at 9.

254. Home countries may tax dividends received even though the income was not derived from within that country. In such cases, Costa Rica may exempt the dividends from the final withholding tax to prevent double taxation. *Id.* § 11.02, at 47. However, if Costa Rica does not exempt the dividends, the home country's tax rate becomes an additional burden on the Costa Rican profits. This exemption does not reduce the tax burden on profits because the Costa Rican tax authorities only exempt the difference in tax rates if the home country's income tax rate is lower than Costa Rica's. *Id.*

255. This rate can be seen from the following example. Assume that a Costa Rican enterprise had before-tax profits of 100 million colones in the tax year and its foreign owners wanted to repatriate all of it. First the 30% income tax must be paid--30 million colones. Thus, 70 million colones remain available for distribution, but the 15% final withholding tax must be imposed on the 70 million colones. The withholding tax equals 10.5 million colones. Total Costa Rican taxes paid, therefore, equals 40.5 million colones, which is 40.5% of the before-tax profits.

Final withholding taxes also apply to interest payments to nonresidents. Like dividends, interest paid to nonresidents is subject to a 15% final withholding tax.[256] Unlike dividends, interest may be deducted.[257] Thus, the withholding taxes on interest does not accentuate the effective tax rate. To take advantage of this benefit, loan, rather than equity, financing is preferable to finance domestic operations to permit interest payments as a means of profit repatriation. However, foreign loans in excess of U.S. $50,000 must be for a term of at least five years, and the interest rate on such loans may not exceed the lawful maximum rate.[258] The tax administration may grant interest payments an exemption from withholding taxes if the recipient-creditor resides in a country that does not permit a credit or deduction for Costa Rican taxes paid.[259] Interest payments provide a means of repatriating profits that is less costly than profit distributions.

Royalty payments require certain documentary evidence, in addition to final withholding taxes. Royalties paid to nonresidents must have a 25% final withholding tax paid at the source.[260] Like interest payments, the tax administration may lower or exempt the payments from taxes if the recipient's country does not allow a foreign tax credit or deduction.[261] The licensing contract must "substantiate" royalty payments.[262] Otherwise, the Central Bank may limit the payment of royalties.[263] Accordingly, the tax

256. 1 Int'l Bureau Fiscal Documentation, *supra* note 3, § 6.08(a), at 24. However, "interest, commission fees, and financial expenses paid to foreign banks and financial institutions approved by the Central Bank" are exempt from the tax. *Id.* Loans from "foreign institutions approved by the Central Bank" or foreign suppliers for imported merchandise qualify for a similar tax exemption. *Id.* § 6.08(c).

257. *Id.* § 2.09(g), at 8 (Interest may only be deducted if "invested or used for the production of the taxpayer's taxable income"). Thus, if the taxpayer qualifies for a tax exemption (such as for export activities), interest would not be deductible and, in any event, interest deductions would provide no tax benefit. Interest paid by sole proprietorships or by "individual enterprises with limited liability" may not be deducted when paid to the individuals who own them or their relatives. *Id.* § 2.09(h), at 9.

258. *Id.* Gen. Info., part A(d), at ii. Large loans must also be registered. *Id.*

259. 1 Int'l Bureau Fiscal Documentation, *supra* note 3, § 11.02, at 47.

260. *Id.* § 6.09, at 24-25.

261. *Id.* § 11.02, at 47.

262. *See supra* note 211 (explaining the procedures to substantiate a licensing contract).

263. *See supra* note 211 (describing limits on royalty payments).

authorities may partly or fully disallow as a tax deduction "excessive" royalties paid.[264] To prevent such disallowance, licensing agreements should document the royalties charged. Royalties provide a good way to repatriate profits, and careful drafting of the licensing agreement will protect their tax deductibility.

Payments for specific services to nonresidents are subject to withholding. Like royalties, service fees to nonresidents entail a 25% final withholding tax,[265] and may qualify for tax exemption from the tax authorities to prevent double taxation.[266] Also, such payments are fully tax deductible if the tax administration does not determine the expense to be "excessive or unnecessary to obtain taxable income."[267] As with royalties, fees should be justified by carefully written documentation to ensure approval of foreign exchange and tax deductions.

Payments for imported materials are not taxed in Costa Rica. Costa Rican tax law excludes income derived from transactions for goods located outside of Costa Rica.[268] Thus, not only are payments to independent suppliers free from Costa Rican taxation, but payments to related suppliers are excluded.[269] As a necessary cost for producing income, such payments may be fully deducted

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264. 1 Int'l Bureau Fiscal Documentation, *supra* note 3, § 2.09(g), at 9 (A tax deduction may also be denied if the royalties paid are deemed "unnecessary to obtain taxable income."). *See supra* note 257 (Tax deductibility may, by analogy, be denied if the expense is not utilized to produce taxable income).

265. 1 Int'l Bureau Fiscal Documentation, *supra* note 3, § 6.10(a), at 25.

266. *Id.* § 11.02, at 47. *See supra* note 145 and accompanying text (explaining double taxation). Service fees includes payments for technical and financial assistance, and other special assistance provided to the enterprise. 1 Int'l Bureau Fiscal Documentation, *supra* note 3, § 2.09(g), at 9 (Technical or financial assistance means any specialized advice, in writing, that follows a "detailed study of the facts or data concerning a situation or problem.").

267. 1 Int'l Bureau Fiscal Documentation, *supra* note 3, § 2.09(g), at 9. *See supra* note 264 (Royalty payments have similar limitations).

268. 1 Int'l Bureau Fiscal Documentation, *supra* note 3, § 2.05(b), at 6. This exclusion is consistent with the tax system's territorial scope. *See supra* note 145 and accompanying text (discussing double taxation). Goods may include materials used for manufacturing inputs or capital goods.

269. The policy of Costa Rica's Central Bank is to deny foreign exchanges for materials purchased from "purely commercial" foreign parent companies because of the Central Bank's suspicion of a motive to repatriate profits. K. Ceciliano, Interview, *supra* note 67.

by the payor.[270] Profits may be repatriated free of all forms of income taxation when characterized as purchases of imported materials. This substantial savings is limited to companies that sell required inputs to Costa Rican subsidiaries. Thus, where purchases are from foreign entities related to the Costa Rican manufacturer, profits may be fully repatriated with no Costa Rican income taxes taken.

D. Investment Guarantees

Foreign investments may be insured against business interruptions. Projects in Costa Rica may qualify for investment guarantees under the Multilateral Investment Agency Guarantee Agreement (MIGA) or the International Finance Corporation (IFC). Projects owned and managed by investors from certain countries or regions may also qualify for investment guarantees from OPIC, the German Finance Company for Investment in Developing Countries (DEG), or Denmark's Industrialization Fund for Developing Countries (IFU). These risk insurers should enable foreign investors to accommodate lender requirements and to reduce risk to acceptable levels.

Several investment guarantee programs are open to all investors, regardless of their nationality. MIGA and IFC are such programs because of their world-wide funding.[271] MIGA, subject to approval by the host government, may provide guarantees against losses to investors of foreign member countries[272] "caused by currency transfer, expropriation, war, revolution, or civil disturbance, and breach of contract by a host government."[273] IFC, on a limited basis, provides loan guarantees, but insurance

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270. 1 Int'l Bureau Fiscal Documentation, *supra* note 3, § 2.09(e), at 8. Capital goods may be fully depreciated over their useful lives for income tax purposes. *Id.* § 2.09(j), at 10.

271. *See* J. RAUNER, *supra* note 167, at 22, 27, 28 (The World Bank supports IFC; MIGA's membership consists of World Bank members).

272. *See* Convention Establishing the Multilateral Investment Guarantee Agency, 1985, 24 I.L.M. 1598 (1985).

273. J. RAUNER, *supra* note 167, at 28. Equity, loans, and loan guarantees by equity holders may be insured for up to 90% of the investment amount, but not to exceed U.S. $50 million in coverage for any single project. *Id.*

premiums may be costly.[274] MIGA specializes in political risk insurance, but IFC is an alternative.

Several programs depend on the nationality of the investors. OPIC provides insurance coverage only for U.S. investors.[275] OPIC insurance covers currency inconvertibility, expropriation, and political violence.[276] DEG may guarantee investments in private sector projects, and usually requires an equity position by German or European partners.[277] IFU guarantees investments that involve Danish companies and significant local equity.[278] In addition to private insurance carriers, several programs are available to affordably reduce the level of investment risk in developing countries, such as Costa Rica.

IV. U.S. Tariff Treatment Accorded to Costa Rican-Made Products

A. The Caribbean Basin Initiatives I and II

To stimulate Costa Rica's economy, the U.S. grants duty-free and quota-free entry to many Costa Rican-made articles. The Caribbean Basin Economic Recovery Act, better known as the Caribbean Basin Initiative or CBI,[279] allows most articles manufactured in Costa Rica to enter the U.S. market, free of import duties and quotas.[280] CBI extends duty-free treatment to a "broad

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274. *Id.* at 27. IFC projects should be commercially sound enterprises, and IFC has a preference for investments with domestic participation. *Id.*

275. *Id.* at 8 (Investors that may qualify include U.S. citizens, U.S. corporations that are majority-owned by U.S. citizens, and foreign businesses in which U.S. citizens or corporations own 95%). Joint ventures may be insured by OPIC, but only that portion held by U.S. investors can be protected. *Id.*

276. *Id.*

277. *Id.* at 14.

278. J. RAUNER, *supra* note 167, at 15. Guarantees are usually extended when IFU is an equity partner but it may also guarantee independent projects. *Id.*

279. *See supra* note 12 (citing the CBI).

280. *See generally* CBI GUIDEBOOK, *supra* note 179, at 1 (describing these and other benefits for CBI beneficiary countries). However, articles that enter the U.S. duty free under CBI "may still be subject to federal excise taxes . . . [and] are still required to comply with all applicable laws, regulations, and standards." *Id.* at 5. CBI II permanently extends the CBI I's duty-free treatment, which was originally set to expire in 1995, and it exempts CBI articles from U.S. Import

range of products" from Costa Rica and twenty-two other eligible beneficiary countries, located in Central America and the Caribbean Basin.[281] Costa Rica has realized CBI's purpose[282] by increasing its exports to the U.S. of "CBI-Eligible, Nontraditional Goods" by 331% in only five years.[283] CBI extends to Costa Rica substantial trade benefits, as intended by the U.S. Congress.

Imported articles must meet certain tests to qualify for CBI duty-free treatment.[284] CBI articles must be imported directly from an eligible beneficiary country into a U.S. customs territory, must not be among the items that are specifically excluded from duty-free treatment,[285] and must conform with CBI's rules of origin.[286] CBI's rules of origin are automatically met when 100% of the article originates in a beneficiary country.[287] Otherwise, at

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Merchandise Processing Fees. *Id.* at 20.

281. *Id.* at 5.

282. The U.S. Congress enacted CBI "to promote economic revitalization and facilitate expansion of economic opportunities" in qualified countries. CBI, *supra* note 12, Preamble, at 369. Helping this region economically, it is believed, will invite political stability, and thus enhance U.S. security. CBI GUIDEBOOK, *supra* note 179, at 1 (Congress also hopes that, as the region grows economically, the U.S. will receive additional export opportunities).

283. PETER WHITNEY, *supra* note 98, at 3 (citing U.S. Dep't Comm.) (Commerce data includes eligible textiles and apparel). In 1983, the U.S. imported from Costa Rica (in U.S. dollars) $127,491 in eligible, nontraditional products; during the 12-month period July 1988 through June 1989, the value of such imports was $549,835. *Id.*

284. In the event that compliance with the law is unclear, eligibility for CBI benefits can be clarified by the U.S. Customs Service, upon request, through advance rulings on the product's CBI eligibility. CBI GUIDEBOOK, *supra* note 179, at 3 (Contact the Value and Special Classification Branch of the Classification and Value Division of the U.S. Customs Service in Washington, D.C.). The U.S. Customs Service normally permits eligible CBI products, accompanied by a properly completed Certificate of Origin Form A (Revised), to enter the U.S. duty free, pending final liquidation. *Id.* at 7.

285. Articles specifically excluded from duty-free entry under CBI are textiles and apparel (unless made from silk blends or non-cotton vegetable fibers, such as ramie), canned tuna fish, petroleum and petroleum products, most footwear and gloves, and most leather products. *Id.* at 3. Watches and watch parts that have any components made in communist countries are also excluded. *Id.* Most leather products from CBI countries will enter at reduced tariff rates, and footwear assembled wholly from U.S. components is duty free. *Id.* at 3, n.5 & n.6. "Duty-free entry of sugar, beef, and ethanol is covered by special rules." *Id.* at 3. CBI II reduces U.S. customs duties on leather goods by 20%, to be phased-in beginning January 1, 1992. *Id.* at 20.

286. CBI, *supra* note 12, § 213, at 387-88.

287. *Id.* § 213(a)(2), at 388 (The imported article must be "wholly the growth, product, or manufacture of a beneficiary country").

least 35% of the article's value must originate[288] in the beneficiary country, unless certain other countries have contributed value to the article.[289] The imported article must be "new or different" from foreign materials used to produce the article in the beneficiary country.[290]

CBI II encourages drawback from the United States.[291] CBI articles derived entirely from U.S. components and ingredients qualify for duty-free treatment.[292] In contrast to previous tests

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288. The importer must show that "the sum of (i) the cost or value of the materials produced . . . plus (ii) the direct costs of processing operations performed" on the article in all CBI beneficiary countries meets or exceeds 35% of the article's appraised value upon entering the U.S. customs territory. *Id.* § 213(a)(1)(B), at 387. "Direct costs" include "(A) all actual labor costs . . ., including fringe benefits, on-the-job training and the cost of engineering, supervisory, quality control, and similar personnel; and (B) dies, molds, tooling, and depreciation on machinery and equipment which are allocable to the specific merchandise." *Id.* § 213(a)(3), at 388. Indirect costs, such as profits, insurance, administrative salaries, marketing and sales costs, and other overhead costs may not be computed towards the specified percentage. *Id.* However, direct costs also "include costs directly incurred or reasonably allocated to the production of the article, such as the cost of labor directly involved in production; . . . rent for factory space (production area only, not administrative offices); [and] electricity directly used in processing." CBI GUIDEBOOK, *supra* note 179, at 7.

289. CBI, *supra* note 12, § 213(a)(1), at 387-88. This percentage test may include the direct costs incurred in Puerto Rico and the U.S. Virgin Islands. *Id.* Under CBI II, Puerto Rican grown or manufactured articles that have "by any means [been] advanced in value or improved in condition in a beneficiary country" may permit the article to achieve the 35% value-added test. Customs and Trade Act of 1990, *supra* note 99, § 215(a), at 657. A maximum of 15% of the value may be derived from processing and materials within the U.S. customs territory. Under CBI II, the President of the United States, with Congress' approval, may change the requirements for duty-free treatment. 7 CBI BUS. BULL., *supra* note 14, at 3.

290. CBI, *supra* note 12, § 213(a)(2), at 388. Merely "combining or packaging" the article, or merely diluting the article with water or with another substance, does not "materially alter the characteristics of the article" for purposes of meeting the "new or different article of commerce" requirement. *Id.* This is the substantial transformation test which is met "if the foreign material is transformed . . . through a substantial processing operation into a new and different product with a different name, character or use." T.D. 88-17, 22 Cust. B. & Dec. 128 (1988) (LEXIS, Itrade library, Cusbul file). A "double substantial transformation" occurs when this new type of article "is then transformed into yet another new and different product." *Id.* Double transformation permits the value of transformed materials from non-CBI countries to be "considered as the value of material produced in the designated country for the purpose of value-added criterion." *Id.* For example, silk is imported from a non-CBI country to Costa Rica, where it is processed and made into a silk-blend fabric; the material is then cut and assembled into finished apparel. Two substantial transformations have occurred to the silk, thus the cost of the silk is used towards meeting the 35% value-added test. *See* CBI GUIDEBOOK, *supra* note 179, at 6 (example using leather belts).

291. *See supra* note 119 and accompanying text (explaining the drawback system).

292. 7 CBI BUS. BULL., *supra* note 14, at 3 (Articles must be "assembled or processed wholly from U.S. components and ingredients (other than water) in a CBI country."). But "textiles and apparel and petroleum and petroleum products" may not reenter duty-free. *Id.*

that focus on the value of foreign content, this new test emphasizes whether an article has any foreign content. Costa Rica's drawback industry already thrives under other U.S. trade programs[293] because the U.S. granted favorable tariff treatment to returning goods.[294] CBI II makes many of these goods eligible for duty-free return. CBI II improves benefits to drawback industries in Costa Rica.

"Major restrictions on U.S. Government procurement from CBI countries have been eliminated."[295] The Buy America Act of 1933 requires the United States government to give preference to domestically produced goods for purchase contracts.[296] In 1986, U.S. President Reagan allowed many CBI articles to qualify for U.S. government contracts.[297] CBI articles can compete directly, without a preference for U.S.-made goods, for U.S. federal government procurement contracts, whereas exporters from other countries bid for government contracts at a disadvantage.[298] Costa Rican goods may now compete for many U.S. federal government contracts.

B. Other U.S. Trade Programs That Benefit Costa Rican Export Manufacturers

Other U.S. trade concessions include U.S. Harmonized Tariff Schedules (HTS) item 9802. HTS 9802 reduces the customs value

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293. AMCHAM, INVESTORS' GUIDE, *supra* note 4, at 56 (The drawback segment of the textile industry has had healthy growth since 1983, but textile production has not grown).

294. *See infra* note 300 and accompanying text (describing the benefits under the HTS program).

295. CBI GUIDEBOOK, *supra* note 179, at 17.

296. *Id.*

297. *Id.* The CBI article's value must exceed 130,000 SDRs (Special Drawing Rights). *Id.* (the International Monetary Fund establishes SDRs). This equals approximately U.S. $184,600. *See Exchange Rates*, Wall St. J., Mar. 1, 1991, at C10 (western ed.) (1 SDR equals about U.S. $1.42). The Trade Agreements Act of 1979 permits U.S. Government purchases, on an equal basis, from countries that agree to reciprocity with their government contracts. CBI GUIDEBOOK, *supra* note 179, at 17. President Reagan then waived the reciprocity requirement as to CBI countries. *Id.*

298. CBI GUIDEBOOK, *supra* note 179, at 17. The potential market created by this benefit is U.S. $20 billion. *Id.*

on articles returning to the United States.[299] Articles entering the U.S. as HTS item 9802 are charged the normal U.S. Customs rate of duty, but the customs value equals only the value-added outside of the United States.[300] Opposite the CBI (and GSP) "substantial transformation" test, the original U.S. articles must not lose their "physical appearance or identity" in the foreign assembly process.[301] HTS item 9802 provides an alternative test for drawback industries. Products of U.S. origin do not need to be "transformed" to qualify for favorable U.S. tariff treatment.

The Guaranteed Access Levels (GALs) program utilizes HTS item 9802 to permit textile and apparel products to enter the U.S. under favorable trade terms.[302] GALs usually apply to fabric and apparel that was formed and cut in the United States, then sewn into finished garments in countries, such as Costa Rica, that have agreements with the United States.[303] GALs require that the U.S. importer be the same enterprise that exported the intermediate article, and various documentary requirements must be fulfilled.[304] The articles may then return to the U.S. under lower

299. *Id.* at 8. HTS item 9802 was formerly known as TSUS items 806.30 and 807. Generally, HTS item 9802.00.60.00 consists of metal articles, and HTS items 9802.00.80.10 and 9802.00.80.50 consist of finished garments. *Id.* at 8-9.

300. *Id.* at 8 (The value added equals the difference in value "between the finished, reimported item, and the original U.S. export.").

301. *Id.* at 9.

302. *Id.* at 18. GALs are also available for "other made-up articles (such as bed linens or soft-sided luggage)." *Id.*

303. Under a special access program negotiated with Costa Rica, woven garments may be dyed and knit apparel may be bleached, permapressed, and dyed and still qualify as HTS item 9802.00.8010. Amendment of Export Visa and Certification Requirements Under the Special Access Program for Certain Products from Costa Rica, 55 Fed. Reg. 49,676 (Committee for Implementation of Textile Agreements 1990) (extending coverage to include more articles). The limits for the twelve-month period from June 1, 1990, through May 31, 1991, are 0.68 million dozen of category 340/640, 0.25 million dozen of category 342/642, and 1 million dozen of category 347/348. Adjustment of Import Limits for Certain Cotton and Man-Made Fiber Textile Products Produced or Manufactured in Costa Rica. 55 Fed. Reg. 31,619 (Committee for Implementation of Textile Agreements 1990) (noting increased import quotas). Articles that incorporate non-U.S. "findings and trimmings (for example, sewing thread, snaps, zippers, lace trim, etc.)" may yet qualify under GALs if the total cost of these components does not exceed 25% of the appraised value of the article. CBI GUIDEBOOK, *supra* note 179, at 19.

304. Form ITA-370P, Special Access Program CBI Export Declaration, must be presented to U.S. Customs for assignment of a shipment control number before exportation of the intermediate articles from the United States. CBI GUIDEBOOK, *supra* note 179, at 19.

tariffs provided that the beneficiary government has adequately allocated its U.S. import quota to the shipment.[305] Articles with U.S. import quotas may nonetheless receive favorable U.S. trade treatment.

C. CBI Compared to Other U.S. Trade Arrangements

CBI benefits are superior to all other U.S. trade arrangements. CBI preferences are superior to the U.S.'s GSP because the GSP grants duty-free access to only a limited number of articles, and because GSP beneficiary countries "may be 'graduated' from duty-free entry privileges for a particular product or from the entire GSP program, as has recently occurred with Singapore, Hong Kong, Taiwan, and [South] Korea."[306] Opposite the GSP, CBI's duty-free treatment excludes only a limited number of articles,[307] and, since the enactment of CBI II, CBI countries are more certain to have permanent duty-free access to the U.S. market.[308] Also, GSP's rules of origin have been made as stringent as CBI's.[309] This "may cause selected goods produced in non-CBI countries that do not meet these [new] rules-of-origin requirements to lose GSP status."[310] CBI is a much better incentive for importers than the U.S.'s GSP.

CBI also compares favorably to the Free Trade Agreement (FTA) between the U.S. and Canada.[311] Certain Canadian manufactured imports will be subject to U.S. tariffs until December

305. *Id.* (An export license, known as a visa, from the beneficiary country's government must be included with the customs documentation to verify allocation of that country's quota). Requests from CBI countries to increase GALs are automatically enacted unless denied by the U.S. within 30 days ("where serious injury would result to the U.S. apparel industry"). *Id.* at 18. The U.S. government is not involved in the allocation of any country's GALs quotas. *Id.* at 19.

306. *Id.* at 9.

307. *See supra* note 285 (listing items that CBI specifically excludes from duty-free access).

308. *See supra* note 280 (CBI II makes duty-free access permanent).

309. 7 CBI BUS. BULL., *supra* note 14, at 4 (Previously, the GSP had less stringent rules of origin than CBI).

310. *Id.* at 1.

311. *See supra* note 15 (citing the U.S.-Canada Free-Trade Agreement).

31, 1997.[312] In contrast, not all manufactured goods are duty free under the CBI,[313] but CBI-eligible goods have not been subject to U.S. Tariffs since January 1, 1984.[314] Furthermore, the FTA's rule of origin requires at least 50% percent of an article's value to have originated in the U.S. and Canada.[315] CBI's rule of origin qualifies an article for duty-free treatment if only 35% of its total value originates from beneficiary countries.[316] CBI tariff treatment surpasses the FTA since, under similar conditions,[317] more products will qualify for duty-free treatment under CBI's tests. CBI provides benefits that are superior to benefits under other U.S. trade programs.

VI. Conclusion

Costa Rica offers a great deal to foreign investors who are looking for new manufacturing sites. The country's proximity to major markets, and its ability to produce goods for considerably less cost than in other countries, enable Costa Rican exporters to compete in major foreign markets. The notable absence of labor strikes permits reliance by buyers on Costa Rican producers to

312. D. Steger, A Concise Guide to the Canada-United States Free Trade Agreement 89-90 (1988) (On January 1, 1998, tariffs on remaining goods, including appliances and textiles will be eliminated). *Accord* Novelli, *Practical Aspects of the United States-Canada Free Trade Agreement*, in The Commerce Department Speaks 1990: The Legal Aspects of International Trade 3 (1990) (WESTLAW, TP-ALL database) (Tariffs will be removed in 1998 for products on ten-year list).

313. *See supra* note 285 (listing articles specifically excluded from duty-free treatment under CBI).

314. Presidential Proclamation Implementing CBI, *supra* note 13.

315. D. Steger, *supra* note 312, at 9. *Compare* Novelli, *supra* note 312, at 5 (The rule of origin only applies to direct processing costs).

316. *See supra* note 288 and accompanying text (describing CBI's general rule of origin). Additionally, CBI value content may include the cost of foreign materials that have undergone a double substantial transformation. *See supra* note 290 (explaining the double substantial transformation concept). Thus, products that incorporate foreign materials are much more likely to qualify for duty-free treatment under the CBI than under the FTA.

317. Canada and Costa Rica are far from having "similar conditions." Costa Rica, with fewer domestic suppliers of materials than Canada, must import more foreign materials. But the CBI's 35% test, compared with the FTA's 50% test, and CBI's double substantial transformation allow the duty-free import of almost all manufactured products not excluded by CBI. Canadian manufacturers may find the FTA's 50% test difficult to exceed, since they must compete with the low-cost producers in South East Asia and the Caribbean Basin.

supply a steady stream of quality goods. In addition, Costa Rica's repatriation policies and tradition of political stability allows foreign owners and creditors to access the subsidiary's profits, after reasonable withholding taxes are paid. Costa Rica, as a manufacturing location, would produce goods that can ably compete in major world markets.

Also important, U.S. trade laws treat Cost Rican goods favorably. Products that meet one of several available tests may enter the U.S. market, either duty free or under low tariffs. Some articles from Costa Rica are subject to import quotas, but most of these articles may enter the U.S. with low tariffs. U.S. trade programs with Costa Rica are more liberal than the U.S.-Canada Free Trade Agreement. Costa Rica is among the small group of countries that receive the most generous terms under U.S. trade policy.

However, to attract foreign investment, Costa Rica must demonstrate that facilities in Costa Rica would perform better than similar facilities located in other countries.[318] Costa Rica, compared to developed nations, offers export manufacturers economical labor, low cost materials and utilities, subsidized financing, and almost unfettered access to the U.S. economy. But, Costa Rica has a high inflation rate, an onerous national debt, and currency exchange problems. Compared with other developing nations, Costa Rica has a modern infrastructure, efficient labor, political and labor stability, and flexible technology transfer policies. However, Costa Rica's relatively high wage rates and labor policies provide costly worker protections and benefits. The comparison of Costa Rica with developed and developing countries demonstrates that, overall, Costa Rica is an excellent location for export manufacturers.

Determining the articles to be manufactured presents another set of factors. Product selection should consider domestic resources, infrastructure, labor costs and skills, management obstacles,

318. *See generally* Yelpaala, *supra* note 70, at 208 (analyzing investment incentive policies that may motivate multinational enterprises to establish foreign operations in the host country).

licensing flexibility, and barriers to entry in primary markets.[319] Business planners may find the matching of appropriate technologies with domestic labor skills and costs to be the most elusive issue. The decision to manufacture a product requires an examination of the host country in conjunction with the task to be undertaken.

South Korea's lag behind Japan provides insight on the matching question. South Korean export patterns lagged fifteen years behind Japan's patterns.[320] The parallel export patterns possibly resulted from the importation of Japanese technologies, which were "better adapted to lower income production conditions" of South Korea than U.S. technologies.[321] Costa Rican manufacturers should obtain South Korean or Japanese technology if these countries have similar labor characteristics. Thus, an investor should evaluate the labor characteristics of successful export countries to determine which industries would provide the best match for Costa Rican labor.

Foreign export manufacturers can benefit from CBI. Many countries, including developing countries, are subject to U.S. import tariffs, quotas, and other fees. CBI eliminated these charges and most quotas on articles produced in CBI beneficiary countries. Foreign companies should establish subsidiaries in CBI countries. One subsidiary purchases materials from the parent company and transforms them into intermediate products. These products are then sold to another subsidiary which transforms them into finished goods. The finished goods are then exported to the United States.[322] Most goods in this way will qualify for unfettered and tariff-free access to the U.S. market under CBI. Foreign exporters, by establishing subsidiaries in CBI countries, can circumvent

319. Less pressing factors for selecting what to manufacture include proximity to market destinations and the home country.

320. Petri, *supra* note 81, at 55.

321. *Id.* at 56-57. Other low-income countries also prefer Japanese technology over U.S. technology. *Id.* at 57.

322. This scenario suggests a "double substantial transformation" which permits all of the foreign materials used to produce the intermediate products to count towards the CBI's 35% origination test. *See supra* note 290 (explaining the double substantial transformation concept). This enables the final product to enter the U.S. duty free.

protective trade measures imposed by the U.S. and produce goods at a lower cost. Foreign companies can profit from the low production costs of operating in Costa Rica and market the goods in the U.S. without paying import duties and charges.

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