

3-17-2005

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Recommended Citation

LADB Staff. "Costa Rica Could Decide CAFTA By Referendum." (2005). <https://digitalrepository.unm.edu/noticen/9289>

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Costa Rica Could Decide CAFTA By Referendum

by LADB Staff

Category/Department: Costa Rica

Published: 2005-03-17

Costa Rica may take a different path in determining whether it will become part of the Central America Free Trade Agreement (CAFTA). The three countries that have so far ratified the pact, El Salvador, Honduras, and Guatemala, have done so by fiat, from the point of view of substantial portions of their citizenry, but Costa Rica may take a more democratic route by necessity.

The country's former chief CAFTA negotiator suggested a referendum as a way around President Abel Pacheco's reluctance to send a ratification bill to the legislature. The negotiator, Anabel Gonzalez, suggested, "The referendum is an option that merits being explored thoroughly," because, "if approval of the free-trade agreement (FTA) is ever more urgent, and the government is not going to do anything about it, and if there exists a mechanism for the genuine population each and every one of us to make the decision, it is necessary to give it serious consideration." Gonzalez said she believes CAFTA is going to be passed by the remaining countries, Nicaragua and the Dominican Republic, and by the US, soon, and she does not want Costa Rica left behind. "For Costa Rica it would be very serious if the FTA were to go into effect for others and not for us, because that would put a lot of investment and many jobs at high risk", she wrote in a newspaper column.

Pacheco, although he supports CAFTA, has been saying for over a year that he would not send up a bill to the congress unless that body passed a fiscal-reform law that has been stalled for two years. A rare consensus in the CAFTA battles The referendum has brought a consensus among legislators, unions, and business leaders, a rarity. But there are legal complications that could prevent a popular vote.

Oscar Fonseca, president of the Tribunal Suprema Electoral (TSE), said that referendums could not take place six months before or six months after presidential elections. The next presidential election is slated for Feb. 5, 2006. That would mean the Asamblea Legislativa (AL) would have until August to work out the details, and that is not much time, given the legal and administrative contortions involved, he said. Gonzalez was not first to think of a referendum.

Various organizations have been calling for one for over a year, and it was officially proposed in the AL by the right-wing minority Movimiento Libertario (ML). The ML proposed July 31 for the popular vote. Many in the AL doubt the slow-moving body can get it done, but many support the idea, including the major parties. So does the Asociacion Nacional de Empleados Publicos (ANEP), a prime mover of the opposition to CAFTA, and the American Chamber of Commerce in Costa Rica (AmCham), a heavy promoter of the pact.

An ambitious campaign

Both sides of the issue believe they would win in a popular vote, but campaigning would be intense. A recent CID-Gallup poll found that 56% of respondents "know nothing" about CAFTA. ANEP

leader Albino Vargas has said his support of the vote is conditioned on guarantees of a national debate reaching all parts of the country, equal television, radio, and print access, and transparent financing of the campaigns. AmCham will launch an educational campaign at private companies aimed at reaching 6,000 workers a week.

A fast-track bill has passed in the AL to speed up procedures. That could hasten work on the referendum, but could do the same for the fiscal-reform bill, with the likely result that Pacheco would send them CAFTA. In that case, the referendum would probably die. The newspaper La Republica has said that if the trade bill goes to the AL, it will pass easily.

Another complicated issue in a referendum is how the measure is worded. Presentation of CAFTA in its entirety would be impractical, and Ombud Jose Manuel Echandi has said that material related to financial and taxation matters cannot by law go to referendum. Echandi recommends the question be limited to whether voters support the opening of the state monopoly insurance and telecommunications enterprises. Voting no on that would effectively defeat CAFTA.

Echandi's recommendation brought down the wrath of the ML, whose presidential candidate Otto Guevara said, "The treaty as a whole should be brought to referendum. It does not include financial material. Let the Sala IV [constitutional chamber of the Corte Suprema de Justicia, CSJ] decide if it does." Guevara said putting the issue as Echandi would is partisan and inconclusive. "What if somebody says, I support opening insurance, but I don't support opening cell phones to competition?"

If wrangling over language does not run the clock down, there is also the issue of referendum logistics. The country has never held a national referendum so has no experience in doing so, said the TSE's Fonseca. They were not even legal until a 2001 constitutional reform allowed them, and the AL never passed legislation spelling out how the process is to be done. The AL is remiss because the constitutional reform required such a law within one year. Echandi's office filed suit over the failure last November, and the AL is now in violation of a Sala IV order to pass one.

No real need to hurry

Not everyone is convinced of the necessity of a rush to pass CAFTA. Minister of Foreign Trade Manuel Gonzalez cautioned that Costa Rica ought not bend to pressure to get it done quickly. "The important thing," he said, "is that Costa Rica, through the government, does not cede to pressure of one group in particular but that it maintain as its principal objective the welfare of all of Costa Rica." He made that statement a day after Guatemala's legislature ratified the pact, and he had the benefit of seeing some of the possible consequences of moving quickly (see other article in this issue of NotiCen).

Manuel Gonzalez added that his government had not been pressed by the US and took the position that "there is no doubt that the moment the United States passes the treaty, that will put, as is popularly said, the finger a little more in the wound of those countries that haven't passed it." Gonzalez said that his ministry, in the meantime, needed to respond to whatever doubts all sectors still have, whether for or against. He held no illusions that popular sectors were not ready to hit

the streets, as has been the case everywhere ratification has occurred, in protest of any precipitous moves on the part of CAFTA advocates.

But time is of the essence Gonzalez's laid-back attitude infuriated some already counting the money to be made from the treaty. According to reports, CAFTA provisions go into effect when any of the countries party to the agreement and the US have ratified the treaty. It is not necessary that all the countries have ratified at the time the US does. Nevertheless, some in the pro-CAFTA camp are rabid on the issue.

"From this day forward, no one in their right mind is going to invest here when they can do it in other countries that have already approved the FTA," warned Camara de Industrias de Costa Rica president Jack Liberman. Samuel Yankelowitz of the Union Costarricense de Camera y Asociaciones de la Empresa Privada (UCCAEP) said, "I don't understand this administration. I don't understand Don Abel [Pacheco], because he knows that already three countries of the region have approved it and that the United States will soon do it, which will leave Costa Rica out of its principal market." They, along with Marco Vinicio Ruiz, coordinator of the Consejo Empresarial para el TLC, will seek meetings with Gonzalez and Pacheco to recommend that they forge an agreement with the AL by which they could process CAFTA and the fiscal reform in parallel to get it all done at once.

Also interested in accelerating the process, the recently formed Asociacion para el Estudio Juridico del Tratado de libre Comercio entre Centroamerica y Estados Unidos has a plan to get even more done at once. The group of 50 pro-CAFTA lawyers has a plan to bring together the legislative committee in charge of CAFTA, the business community, and the university community to draw up laws parallel to the treaty having to do with telecommunications, agriculture, and insurance, the main sticking points. They have already had a meeting of 400 participants to get the ball rolling.

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