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By the second-narrowest of margins, Oscar Arias won the Costa Rican presidential elections. He is to take office May 8. He won by 1.2%, just 18,167 votes, over rival Otton Solis. Arias got 40.92% of the total to Solis' 39.8%. This was the closest vote since 1966, when Jose Joaquin Trejos Fernandez beat Daniel Oduber Quiros by 4,220 votes. Arias' numbers alone portend tough times ahead for the new administration, but the more substantive and immediate reason for a difficult presidency is the Central America Free Trade Agreement (CAFTA).

The election was in part a referendum on CAFTA. Costa Rica remains the only country involved in the trade deal not to have ratified it. Polls have shown the population to be about evenly divided on the wisdom of a trade deal with the US, President Pacheco has been ambivalent about it (see NotiCen, 2005-05-12), and the legislature has been in no hurry to consider it. Now the unions and popular sectors are promising to fight the pro-CAFTA Arias every step of the way. These organizations have been supportive of Solis, who has called for major modifications to the text of the agreement before bringing it up for congressional ratification.

Albino Vargas of the Asociacion Nacional de Empleados Publicos (ANEP) said flatly, "Arias would be a president synonymous with confrontation because he works for the oligarchy that is pro-free trade with the United States." ANEP, the country's largest union, is joined by other people-power centers in its plans to give the new president a hard row to hoe. In the legislature, Arias faces a test of his negotiating skills. His party, the Partido Liberacion Nacional (PLN), won 25 seats in the 57-member body. Solis' Partido Accion Ciudadana (PAC) won 18, upending the ruling and formerly formidable Partido Unidad Social Cristiano (PUSC).

The PUSC, brought low by pre-electoral scandal (see NotiCen, 2004-11-04), managed to salvage just four seats. The Movimiento Liberatario (ML) won six, and the remaining four were divided among tiny parties.

New legislature reluctant

Newly elected deputies have signaled that they intend to be cautious of CAFTA. One idea floated months ago by Pacheco was to submit the treaty to a popular referendum (see NotiCen, 2005-03-17), which a recently passed law permits. Marta Zamora, chief of the PAC delegation, thinks putting it in the people's hands is a good idea. "It would be a good initiative for citizens to do it, but one would have to look into how to give sufficient publicity and information to the subject. We haven't proposed it within the party, but I believe there is a restlessness about it that will manifest at any moment."

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Zamora is uneasy about the reach of the referendum law, however. She said she thinks it lacks controls over propaganda on a given issue. In the CAFTA case, for instance, interested parties could invest untold amounts of money with no provision to divulge where the funding comes from. Within the PUSC, caution reigns as well.

"There are opinions in the party about whether or not to submit it to referendum; it all depends on how things evolve in coming weeks," said Deputy Mario Redondo. The representative of the still-ruling party is concerned that the referendum could further polarize the populace, rather than produce an agreement that would be widely accepted. The ML is more favorable to the referendum, but even this party is concerned about ambiguities.

The law excepts referenda on tax and fiscal issues, and Deputy Frederico Malavassi hedges, "Some consider that CAFTA gets into taxation matters, so we have taken it to the Sala Constitucional." Luis Ramirez, of Arias' PLC, said the referendum question has not come up within the party, since it is a question that requires "deep study." His concern reflects the others'. "This is a subject that can't be handled in the streets," said Ramirez. "It is very technical, and therefore there are the exceptions [to the law.] Nevertheless, if the exception doesn't apply, I wouldn't see a problem as long as sufficient information is guaranteed in the process."

Whether or not the law is applicable, a delay is built into it. The Ley de Referendo stipulates that the measure cannot be used for a period of six months before or after an election. That would take CAFTA off Arias' desk until August 2006 at the earliest. A delay of this kind, with a subsequent shift of the decision into the hands of the people, could work to Arias' benefit.

The narrowness of his victory does not give him the mandate he would need to confront anti-CAFTA forces. ANEP's Vargas has been forthright about this. "The treaty confronts us, deepening the division among Costa Ricans. If he insists on pushing it, we will work with greater earnestness to defeat it in the streets of the country," he said, adding for emphasis, "CAFTA should be thrown into the dump, discarded, buried, excluded from the national discussion."

Arias is on very thin ice with the unions and social sectors. They already view his presidency as illegitimate, based upon the Constitution's proscription of second presidential terms, the recent Sala Constitucional decision that allowed it notwithstanding. But they are open to changing their minds on this. CAFTA is the sine qua non. "To legitimize himself politically, he will have to toss the treaty," said Vargas.

This strong CAFTA-based opposition comes just as one of Arias' major campaign arguments has been shredded. Solis campaigned for renegotiation of the treaty, with Arias contending that no such post facto visitation was possible. But now it has been reported, and carried prominently in the Costa Rican financial press, that El Salvador has done just that, although not necessarily to its benefit (see other story, this edition of NotiCen). El Financiero reported that delegations of both countries (El Salvador and the US) met in Washington and San Salvador during the entire month of January to renegotiate agricultural quotas, a divisive issue in Costa Rica as well.

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It turns out that CAFTA does contemplate the possibility of amendments once the countries have ratified the agreement. If the issue is a multilateral one, amending it requires the consent of all seven states, but, if it is a bilateral question, it can be reworked without the countries going back to their respective congresses. This cannot be taken to mean, though, that renegotiation offers the new president an easy exit. The renegotiations would very likely tilt in the direction of existing asymmetries, favoring new demands of the US in the area of bioterrorism as it affects the treaty and recognition of the primacy of US inspection and control regimes.

US demands in the case of El Salvador have aimed at inequities not between the countries but within the smaller country. The treaty as written allowed enterprises that had been in business for more than three years exclusive access to 95% of quotas. The US wanted, and got, the figure reduced to 80% to let more players into the game. The US also got changes on the sanitary issues and on dispute-resolution procedures. The US is seeking to renegotiate with the other CAFTA countries as well.

The effect of this revisitation appears to have treaty supporters in Costa Rica apprehensive. Mario Montero, executive director of the Camara de la Industria Alimentaria (CACIA), said that it is all speculative, but, if it were to happen, Costa Rica would have to stand up to US pressures. Alejandro Hernandez of the Camara de Productores Avicolas worried about further politicization of the pact. The government is for the moment satisfied to lie low and await US formal demands. Minister of Foreign Trade Manuel Gonzalez acknowledged that the other countries of the isthmus have gotten formal requests from the US for alterations but that this does not mean, necessarily, that Costa Rica must expect a knock at the door, nor does it mean that the US recognizes Arias' precarious position and awaits a more propitious moment.

There are already ample signs that the producing sectors, once united in their enthusiasm for a trade agreement, are becoming divided. Added to Arias' other CAFTA-related dilemmas are procedural uncertainties in the legislature. Congressional president Gerardo Gonzalez has insisted that only a simple majority is necessary to ratify CAFTA, 29 votes. If this turns out to be the case, analysts believe Arias could count on the votes of his own PLC and of the PUSC in the new Congress. CAFTA would pass with these. Others insist that a supermajority would be needed. The dispute could take time to resolve, especially if it is taken to court. If it is decided for a two-thirds majority, Arias could find himself short.

Another headache for the new president could come as a consequence of success on CAFTA. If, against all prognostications, the present legislature votes it in, the consequences would be felt in the streets. This legislature has already upset the political equilibrium with the somewhat-surprising passage of Pacheco's fiscal reform. The PUSC and PLN cooperated on this, enraging the ML, which had been against it. Libertarian Deputy Federico Malavassi said his party could well decide to punish the parties by voting against CAFTA in this session if it comes up, and in the next if it does not. "I see the CAFTA proceeding as more difficult now. They (PLN) have lost it. Now, they better not come to us to pull their chestnuts out of the fire," he said.

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