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After Referendum, Costa Rica Still A Long Way From CAFTA Implementation

by Mike Leffert

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The fight regarding the Central America Free Trade Agreement (CAFTA) is not over in Costa Rica. One might have thought that, when the electorate narrowly approved the referendum on Oct. 7 (see NotiCen, 2007-10-18), the contention would have been laid to rest, Costa Rica would have ceased to be the last holdout, and CAFTA would have become a fact in the country, just as it is in Nicaragua, Honduras, El Salvador, Guatemala, and the Dominican Republic. But one would have been wrong, reckoning without the Asamblea Legislativa (AL), which is still very much divided on CAFTA and which has yet to pass the 13 enabling laws, the Implementation Agenda, that would allow CAFTA to become operational.

The AL has until March 1, 2008, to get these laws passed. This is the second legislature to make the attempt. The treaty was negotiated during the presidency of Abel Pacheco (2002-2006). But Pacheco was ambivalent about it (see NotiCen, 2005-05-12) and was not willing or able to move his party, the now almost defunct Partido Unidad Social Cristiana (PUSC), to pass the laws before the May 2006 end of the legislative term. Other problems were posed by the series of high-level scandals that saw revered ex-presidents indicted and by the formidable opposition mounted by the Partido Accion Ciudadana (PAC) under its leader Otton Solis.

Solis went on to be very narrowly defeated in the presidential elections that brought Oscar Arias to power, and he is still very much in the game, as opposed as ever to a treaty he has long said must be renegotiated from the ground up (see NotiCen, 2006-02-09). Arias' Partido de Liberacion Nacional (PLN) now has 25 of the Asamblea's 57 seats, short of a simple majority and way short of the supermajority (38) it was able to cobble together to pass CAFTA.

The PAC, meanwhile, had sufficient power to push the referendum to a conclusion that went against its position, but at 52% to 48%, not overwhelmingly. The narrowness of the vote leaves Costa Rica with no great mandate for free trade and an energized, effectively organized opposition. And it leaves President Arias, say analysts, with the task of keeping the 13 minority-party legislators he had in his corner before the referendum on board.

Still embattled, with other fish to fry Arias is not bulletproof at this juncture. His approval ratings and general popularity have improved since his narrowly won election, but that popularity may not extend to the neoliberalism that he embraces and that Solis eschews. The president has demonstrated negotiating skills, but it is not clear to many analysts and observers what he has to offer minority-party deputies to keep the country from becoming the first country to have negotiated and approved a free-trade agreement (FTA) with the US and then not implemented it.

Until now, notes analyst Jonathan Heath, director of economic studies of HSBC Mexico, most governmental and legislative energies have been focused on the trade pact. But now other issues are

coming to the fore. Costa Rica is in need of fiscal reform to increase inflows to the national coffers, adjust public spending, and reduce public debt. Since the Pacheco years, there have been problems with high public debt and resulting inflation. The debt has eased somewhat as infrastructure spending has diminished, but the needed legislation will not happen until the CAFTA issue is resolved.

The reform will entail introducing a value-added tax (VAT), or impuesto al valor agregado (IVA), and establishing rates for an income tax. Heath acknowledges that the government has managed to increase its income through economic improvements aided by an uptick in exports, but he argues that CAFTA is needed to send exports even higher so the government can spend even more on infrastructure and poverty reduction.

Meanwhile, the opposition contends the pact will hurt small producers and will not do anything to combat unemployment. Indications are that the legislature is not buying the pro-CAFTA argument. The Implementation Agenda shows no sign of moving, and Arias has said he would not ask the US for an extension of the March 1 deadline, which the PAC, still hopeful of renegotiation, has called for. For the moment, the PAC is able to control the pace of legislative proceedings because, with 38 members needed for a quorum, it has been able to stop the action when the majority could not summon every one of its soldiers. The party has also introduced a number of "clarification motions" to slow progress.

Thus far, the PAC has been true to a pledge given to Minister of the Presidency Rodrigo Arias by PAC delegation chief Elizabeth Fonseca that, after the referendum, it would neither retard nor facilitate the agenda. But that is a somewhat passive-aggressive version of things, given the many demonstrations that have taken place within the chamber. The visitors' gallery has erupted on occasion, and there was even a bomb threat. In one way, the very fact that the legislature must take up the Implementation Agenda is a victory for the opposition. The government's position is that approval of the agenda is implicit in the referendum, a position that has rung up a firm "no sale."

A couple of the 13 items have managed to sneak through to passage. It has been reported that the national version of the International Union for the Protection of New Varieties of Plants (UPOV 91) convention has passed (see NotiCen, 2006-09-07) as has the Treaty of Budapest on the patenting of microorganisms. Compared to what the deputies have ahead of them, these laws are as tiny as the organisms they cover. Looming in the distance are penal-code reforms on corruption, intellectual-property reforms, laws protecting international brands, and, most explosive of all, laws ending the telecommunications and insurance state monopolies. Only after these are signed into law can Costa Rica seek formal certification from the US.

The government has some reason to feel betrayed by the PAC, to feel the pledge has been broken. The bill to protect the plants, for instance, suffered more than 1,000 amendments at the hands of the PAC. Complained Minister Arias, "I believe there has indeed been a direct obstruction to approval of these bills. The fact that 1,000 amendments have been presented to one bill is not a normal procedure. Clearly the only interest there is in delaying the voting on this legislation and impeding compliance with the will of the people expressed at the polls."

The parties in step with the administration also expressed frustration with the brazenness and power of the opposition. Lorena Vazquez of the now virtually insignificant PUSC, a coattails party of just four deputies, said, "It is clear that the action of this parliamentary sector is not motivated by the right to amendment but rather by the effort to obstruct and set back, to the maximum possible, the voting on this initiative, which forms part of the Implementation Agenda and which must be passed before Feb. 29, 2008." In short, the once confident majority is sensing it is in difficulty.

Rubbing it in, as it were, the PAC has responded that the group of 38 does not need any help from the PAC to get its job done but, as a matter of principle, it will not renounce its right to propose amendments. No one fails to see, of course, when the number of amendments is so high, that there is anything but obstruction going on. It is all part of a game the opposition has not yet lost and has no intention of losing. If the anti-CAFTA forces do at some point have to pack it in and concede, the cause might be a break in their own ranks. A crack has already been observed.

PAC Deputy Andrea Morales, at 25 the youngest member of the Asamblea, has said she does not agree with her party's strategy. She has admitted obstructionism but does not seem set to become a pariah within the party. Even Otton Solis has recognized the 'death by a thousand amendments' tactic is wrongheaded. These admissions have come as indications mount that the majority, the G-38 as they have come to be called, are showing signs of fatigue. The double sessions lasting well into the night have taken a toll on discipline, and they have had trouble making their quorums.

Also, CAFTA is not the only pot on the stove. November is the month the AL traditionally takes up debate on and passage of the national budget for the coming year. In December, there are obligatory legislative shutdowns for the holidays and other end-of-year details that will detract from the legislative process. Another insect in the unguent could be the introduction of mitigating measures to take the pain out of some of the legislation.

When the Ley General de Telecomunicaciones, covering the near-sacred state monopoly, comes up, not all G-38 members are on the same page. The Movimiento Libertario (ML) has said it would like to see an opening but one less radical than what the US could approve. The PUSC has insisted on a "development agenda," which the government sees as a wealth-distribution policy that it wants no part of. To make the most of the little time available, the pro-CAFTA side has introduced a variety of proposals and measures, including a "fast-track" legislative process limited to international contracts like this, wherein time limits on speeches and limits on the number of sessions allowed for passage are invoked.

The ML has proposed packaging up to four pact-related laws in a single bill that would require a single vote, hence saving time. But like the bear that went up the mountain and saw another mountain, it seems a CAFTA advocate's work is never done. Even if the legislature gets the job done on time, there are still some pits into which the treaty might fall.

The referendum's result has not ended the popular opposition and the formidable popular organizations it has built. These organizations have pledged to fight on, to ignore the election result, arguing, as do the Comites Patrioticos, that "media fraud has been perpetrated, and that the media

continued to disseminate pro-CAFTA propaganda during the three day period prior to the vote, in violation of agreements."

The organizations are also pressing the position that the Implementation Agenda was not part of the referendum. They have said, therefore, they would impede implementation both of the treaty and of the new laws. Their plans call also for continued action against the PLN for the fear campaign that has already brought about the resignation of Vice President Kevin Casas (see NotiCen, 2007-09-27). The organizations are responsible for continuing agitation in the public spaces of the legislature itself, a time-consuming distraction.

A bomb threat, not authoritatively attributed to the comites, emptied the AL building on one occasion, halting a work session on the legislative floor. Outside the confines of the congress, the comites have continued, with success, to organize traffic-stopping demonstrations around the country.

With the process in serious arrears, President Arias could ask for an extension of the deadline. That would require the approval not only of the US but also of the other CAFTA countries. If any single country objected, no extension would be granted. Arias has said he would not request an extension, and his statement on the subject was more than a little parentally punitive. "I have not thought about asking for an extension. I expect us to be responsible, and the time we have been given is more than sufficient for any civilized country. If, from now to Feb. 29, we are incapable of coming to agreement and finding the necessary procedures for passing the implementation legislation, it is because we are too mentally underdeveloped," said the president.

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