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Costa Rica's Constitutional Court Delivers Severe Blow to Prospects For Cafta Inclusion

by LADB Staff

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Costa Rica has once again had to throw itself upon the mercies of friends just to stay in the game. A couple of weeks ago proponents of ratification of the Central America Free Trade Agreement (CAFTA) were pleased to see headlines saying the country was "On Cusp of CAFTA Approval; Presidents To Meet This Month." But it was not to be.

Now Costa Rica is acknowledging that it will not meet its extended deadline for passing the enabling legislation and must ask for a second extension to remain eligible for membership in the trade agreement. There was to be a celebratory meeting between Presidents Oscar Arias and George W. Bush, tentatively set for Sept. 23, a week before the Oct. 1 deadline for making Costa Rica the seventh and last CAFTA member. All that was needed was for the legislature (Asamblea Legislativa, AL) to pass the last of 13 bills into law, bringing the country's legal framework into line with US demands.

That final bill concerned intellectual property, protections for brand-name drugs, and the right of US companies to patent native flora. The AL passed the legislation despite opposition that has held it at bay for more than two years (see NotiCen, 2007-11-15). From there it went to the Constitutional Chamber of the Corte Suprema de Justicia (CSJ) for a routine examination of the constitutionality of the law. And that is where it all came unraveled.

Stunning everyone, even leading CAFTA opponent Otton Solis, leader of the Partido Accion Ciudadana (PAC), who predicted the legislation would sail past the court without incident, the court declared it unconstitutional. The court ruled that due process had been breached. Specifically, a consultation process should have taken place with indigenous populations before the congressional debate in compliance with requirements of the International Labor Organization (ILO).

The government had previously refused to do this (see NotiCen 2006-09-07). Convention 169 of the ILO, to which Costa Rica is signatory, says in Article 6, "In applying the provisions of this Convention, Governments shall: (a) Consult the peoples concerned, and in particular through their representative institutions whenever consideration is being given to legislative or administrative measures which may affect them directly." Compliance with Convention 169 is required by the Costa Rica Constitution's Article 7, which declares that international treaties and conventions ratified by Costa Rica are of a higher authority than is the national law.

The indigenous people would be adversely affected by CAFTA because the trade agreement would permit pharmaceutical companies or others to patent their knowledge and claim ownership of the properties of the country's diverse flora. In their words, CAFTA legitimizes biopiracy (see NotiCen,

2006-06-22). When indigenous leaders raised this as a matter of their rights, the government, claiming their interests were protected elsewhere, denied their right to consultation.

CAFTA forces down but not out

The decision was a stinging slap at the government and pro-treaty forces. Deputy Mayi Antillon of Arias' Partido Liberacion Nacional (PLN) acknowledged it would be "practically impossible" to push another version through the legislature before the Oct. 1 deadline. The date was already an extension of an original date for compliance, which the US allowed last February with a warning that it would be the last (see NotiCen, 2008-02-07). The government issued a joint bulletin from the presidency and the Foreign Trade Ministry, anxious in tone, promising it would "do everything possible within its power in order not to affect the effective incorporation of Costa Rica in the trade agreement."

With no quick response to the government plea, the matter went to the legislative committee on constitutional issues, the Comision de Consultas sobre Constitucionalidad, at 10 a.m. on Sept. 16. The time was significant because the committee had 48 hours to present a correction that would correct the errors the court found. But even with a rush patch job, president of the Directorio del Congreso Francisco Antonio Pacheco, a member of the committee, doubted a satisfactory bill could be passed in time. And this is where throwing themselves on the mercies of friends comes in.

Agreeing with Pacheco's assessment, Deputy Lorena Vasquez suggested, "I'm of the opinion that Costa Rica should make a partial deposit and say here are 12 laws [in compliance] with your regulation." Government officials have indicated that Vasquez's recommendation might well be part of what the administration intends to do. The meeting with Bush that was supposed to be a celebration will now be an exercise in supplication.

Arias, together with his Ambassador to Washington Tomas Duenas, Foreign Trade Minister Marco Vinicio Ruiz, and Foreign Minister Bruno Stagno, will visit the US, hat in hand, to request more time. "We have to be clear that, in everything else, we must be ready no later than Sept 30. I refer to the regulations and administrative matters of the other 12 laws. Only this project [the 13th law] can remain pending," Vice Minister of the Presidency Roberto Thompson told reporters. But, even with an extension, time is not on their side. Costa Rica faces the possibility of the expiration of contracts with textile firms before CAFTA goes into effect. That would cause substantial loss.

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