EL SALVADOR

TRADE SUMMARY

In 2001, the U.S. trade deficit with El Salvador was $111 million, a decrease of $42 million from the U.S. trade deficit of $153 million in 2000. U.S. goods exports to El Salvador were $1.8 billion, a decrease of $9 million (0.5 percent) from the level of U.S. exports to El Salvador in 2000. El Salvador was the United States' 44th largest export market in 2001. U.S. imports from El Salvador were $1.9 billion in 2001, a decrease of $51 million (2.7 percent) from the level of imports in 2000.

The stock of U.S. foreign direct investment (FDI) in El Salvador in 2000 amounted to $745 million, an increase of 3.2 percent from the level of U.S. FDI in 1999.

IMPORT POLICIES

Tariffs

As a member of the Central American Common Market (CACM), El Salvador has agreed to implement a maximum common external tariff of 15 percent. As this commitment continues to be phased in, certain products remain subject to tariffs above the 15 percent ceiling. Salvadoran imports of clothing, certain agricultural products, vehicles, and certain other items remain subject to tariffs ranging from 15 to 30 percent -- and in a few cases even higher. Tariffs on new and used finished clothing are generally 25 percent. Tariffs on fabrics range from 15 to 20 percent with some exceptions.

In April 2000, the government of El Salvador announced policy measures to foster agricultural development, including: the application of the 13 percent Value Added Tax (VAT) to grains, fruits, vegetables, and dairy products, (previously exempted from this tax); the maintenance of a variable 20 to 40 percent ad-valorem duty on grains imported from non-CACM countries; and the implementation of more rigorous sanitary standards on dairy products.

Non-tariff Measures

Since 1992, the Ministry of Agriculture has imposed arbitrary sanitary measures on U.S. poultry imports. These sanitary restrictions call for zero tolerance or negative laboratory tests for diseases such as *aviana denovirus*, chicken anemia, and salmonella. These diseases, common worldwide, are not recognized as list "A" diseases by the International Office of Epizootics. Given the ubiquitous nature of salmonella throughout the world, it would be difficult for any established poultry-producing country to guarantee zero tolerance or negative lab tests on meat that has not been cooked or irradiated. The Salvadoran government applies these standards in a discriminatory manner since domestic production is not subject to the same requirements as imports. As a result of these measures, the United States has been unable to export poultry to El Salvador. The industry estimates the value of lost U.S. poultry exports at $5 to $10 million per year.

The government of El Salvador requires that rice shipments be accompanied by a U.S. Department of Agriculture certificate stating that the rice is free of Tilletia barclayana. There is no chemical treatment that is both practical and effective against T. barclayana. El Salvador failed to notify the WTO, under the Agreement on the Application of Sanitary and Phyto-Sanitary Measures of these restrictions. There is no WTO-required science-based risk assessment to justify these restrictions.

El Salvador appears to be implementing the WTO Agreement on Customs Valuation after a sixteen month extension granted by the WTO Committee on Customs Valuation ended on September 7, 2001. The United States awaits El Salvador's notification of its domestic implementing legislation to the WTO.

STANDARDS, TESTING, LABELING AND CERTIFICATION

Consumer products require a certificate indicating that the product has been approved by U.S. health authorities for public sale, but this rule is not generally enforced. However, the requirement that importers deliver samples for laboratory testing to the Ministry of Health is enforced. In addition, product registration by importers is required by the Ministry of Public Health. All imports of fresh food, agricultural commodities, and live animals coming from non-CACM countries must be accompanied by a sanitary certificate. Basic grains and dairy products also must have an import license.

The United States has raised concerns regarding the potentially discriminatory effects of a proposed Salvadoran technical standard for distilled spirits.

GOVERNMENT PROCUREMENT

Government purchases and construction contracts are usually open to foreign bidders. The Legislative Assembly passed a new, more transparent procurement law in April 2000 that applies to the central government structure as well as to autonomous agencies and municipalities. El Salvador is not a signatory to the WTO Agreement on Government Procurement.

EXPORT SUBSIDIES

El Salvador offers a six percent tax rebate to exporters of non-traditional goods based on the F.O.B value of the export. To the extent that this rebate exceeds the amount of tax levied on such goods, it constitutes an export subsidy. The following products do not enjoy this rebate: coffee, sugar, cotton, and metal/mineral products. Processed coffee, however, is eligible for the rebate if it incorporates 30 percent of national value added, for instance if it is shipped as "gourmet" coffee, or "organic" coffee. Sugar can also qualify if it is exported as refined sugar. Assembly plants (*maquilas*) are eligible if they meet the criteria of adding 30 percent Salvadoran value in the production process. Firms operating in free trade zones are not eligible to receive rebates as they already enjoy a 10-year exemption from income tax and duty-free privileges.

INTELLECTUAL PROPERTY RIGHTS (IPR) PROTECTION

El Salvador has achieved progress in bringing its laws into compliance with the WTO Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS) and in improving domestic enforcement activities, although certain legal weaknesses and ongoing piracy activity persist. The special unit for the monitoring and enforcement of intellectual property rights created in the Attorney General's Office conducted 120 raids in 2001, seizing pirated shoes, clothing, books, imitation food products, software, cassettes, CDs, videos, pharmaceuticals, and other items.

Patents

The 1993 Intellectual Property Protection Law and El Salvador's acceptance of the disciplines in the TRIPS Agreement addressed several areas of weakness in the patent regime. The 1993 law lengthened patent terms to 20 years from the application filing date. Certain provisions of the law, however, do not appear to be TRIPS-compliant, including a limitation of 15 years on patent protection from the date of application for pharmaceutical products. Other problems include the lack of protection of products in the development pipeline. The patents unit in the Commercial and Intellectual Property Registry, however, has begun to issue pharmaceutical patents for 20-year terms to comply with TRIPS, and the government has indicated that further TRIPS-compliant amendments may be considered.

Copyrights

Starting in 2001, the National Civil Police also seized large quantities of pirated CDs and cassettes using a customs law that allows seizure if a vendor cannot produce documents showing that the items were cleared through customs. The Salvadoran government joined with the Business Software Alliance in November 2001 to conduct an audit of the government's computers and committing to legalize all software not properly registered. Despite these and other positive developments, the U.S. industry estimated losses due to business software piracy at $13.5 million in 2000. Of additional concern in El Salvador's intellectual property regime is a pending bill that would eliminate or make it difficult to obtain criminal enforcement in copyright cases.

Trademarks

Legislation to improve trademark protection and TRIPS compliance was sent to the Legislative Assembly in 2001, but was not acted on. The legislation may be considered in 2002. The Attorney General's office achieved some successes in enforcing trademark laws during 2001. The mercantile and criminal courts, however, have demonstrated weaknesses in providing redress for violations of trademarks.

SERVICES BARRIERS

El Salvador maintains few barriers to services trade. The country has accepted the Fifth Protocol to the WTO's General Agreement on Trade in Services, which was necessary to bring its commitments on financial services into effect.

Foreign investors are limited to 49 percent of equity in free reception TV and AM/FM radio broadcasting. There are no such restrictions on cable television ownership. Foreign lawyers must be graduates of a Salvadoran university and notaries must be Salvadoran citizens.

INVESTMENT BARRIERS

There are no significant barriers to investment in El Salvador. The United States and El Salvador signed a Bilateral Investment Treaty in 1999; the treaty is pending ratification by the Salvadoran legislature.

Franchise companies may view El Salvador more cautiously following a November 2001 court ruling involving a major multinational restaurant franchise. The judge ruled that a local business that lost the Salvadoran franchise five years earlier in fact had a franchise contract and could use the multinational company's trademark signs and product names at three restaurants in operation when the franchisee was terminated and at four more opened without franchise licenses. The ruling did not cite the need for the local business to get franchise licenses to operate the new restaurants. The case has been appealed.