EL SALVADOR

TRADE SUMMARY

The U.S. goods trade surplus with El Salvador was $236 million in 2008, a decrease of $34 million from $270 million in 2007. U.S. goods exports in 2008 were $2.5 billion, up 6.5 percent from the previous year. Corresponding U.S. imports from El Salvador were $2.2 billion, up 9.0 percent. El Salvador is currently the 59th largest export market for U.S. goods.

The stock of U.S. foreign direct investment (FDI) in El Salvador was $1.4 billion in 2007 (latest data available), up from $638 million in 2006.

IMPORT POLICIES

Free Trade Agreement

On August 5, 2004, the United States signed the Dominican Republic-Central America-United States Free Trade Agreement (CAFTA-DR or Agreement) with five Central American countries (Costa Rica, El Salvador, Guatemala, Honduras, and Nicaragua) and the Dominican Republic (the Parties). Under the Agreement, the Parties are significantly liberalizing trade in goods and services. The CAFTA-DR also includes important disciplines relating to: customs administration and trade facilitation, technical barriers to trade, government procurement, investment, telecommunications, electronic commerce, intellectual property rights, transparency, and labor and environmental protection.

The Agreement entered into force for the United States, El Salvador, Guatemala, Honduras, and Nicaragua in 2006. The CAFTA-DR entered into force for the Dominican Republic on March 1, 2007, and for Costa Rica on January 1, 2009.

In 2008, the Parties implemented amendments to several textile-related provisions of the CAFTA-DR, including, in particular, changing the rules of origin to require the use of U.S. or regional pocket bag fabric in originating apparel. The Parties also implemented a reciprocal textile inputs sourcing rule with Mexico. Under this rule, Mexico provides duty-free treatment on certain apparel goods produced in a Central American country or the Dominican Republic with U.S. inputs, and the United States provides reciprocal duty-free treatment under the CAFTA-DR on certain apparel goods produced in a Central American country or the Dominican Republic with Mexican inputs. These changes will further strengthen and integrate regional textile and apparel manufacturing and create new economic opportunities in the United States and the region.

Tariffs

As a member of the Central American Common Market, El Salvador agreed in 1995 to harmonize its external tariff on most items at a maximum of 15 percent with some exceptions.

Under the CAFTA-DR, about 80 percent of U.S. industrial and consumer goods now enter El Salvador duty-free, with the remaining tariffs phased out by 2015. Nearly all textile and apparel goods that meet the Agreement's rules of origin now enter El Salvador duty-free and quota-free, creating economic opportunities for U.S. and regional fiber, yarn, fabric, and apparel manufacturing companies.

Under the CAFTA-DR, more than half of U.S. agricultural exports now enter El Salvador duty-free. El Salvador will eliminate its remaining tariffs on nearly all agricultural products by 2020 (2023 for rice and chicken leg quarters and 2025 for dairy products). For certain agricultural products, tariff-rate quotas (TRQs) will permit some immediate duty-free access for specified quantities during the tariff phase out period, with the duty-free amount expanding during that period. El Salvador will liberalize trade in white corn through expansion of a TRQ, rather than by tariff reductions.

Nontariff Measures

Under the CAFTA-DR, El Salvador committed to improve transparency and efficiency in administering customs procedures, including the CAFTA-DR rules of origin. El Salvador also committed to ensuring greater procedural certainty and fairness in the administration of these procedures, and all the CAFTA-DR countries agreed to share information to combat illegal transshipment of goods. In addition, El Salvador has negotiated agreements with express delivery companies to allow for faster handling of their packages, but Salvadoran Customs and the delivery companies disagree on whether the agreements have been implemented. In particular, U.S. express delivery companies have raised concerns regarding customs clearance delays, acceptance of electronic documents, duty-free treatment of minimum-value merchandise, and the submission of a single manifest covering all goods contained in an express delivery shipment.

STANDARDS, TESTING, LABELING, AND CERTIFICATION

El Salvador and the other four Central American Parties to the CAFTA-DR are in the process of developing common standards for the importation of several products, including distilled spirits, which may facilitate trade.

Sanitary and Phytosanitary Measures

El Salvador recognized the equivalence of the U.S. food safety and inspection system for beef, pork, poultry, and dairy, thereby eliminating the need for plant-by-plant inspections of U.S. producers.

El Salvador continues to prohibit imports of U.S. beef and beef products from cattle over 30 months of age, as well as live cattle over 30 months of age, due to the 2003 discovery of a Bovine Spongiform Encephalopathy (BSE) positive animal in the United States. Current World Organization for Animal Health (OIE) guidelines for BSE provide for conditions under which all beef and beef products from countries of any risk classification for BSE can be safely traded when the appropriate specified risk materials are removed. The OIE categorized the United States as "controlled risk" for BSE in May 2007. The United States continues to press El Salvador to (1) base its import policies on science, the OIE guidelines, and the OIE's classification of the United States, and (2) put in place import requirements for BSE that allow for the entry of U.S. beef and beef products from cattle of any age as well as all live cattle.

El Salvador previously applied sanitary and phytosanitary (SPS) measures on imports of poultry, poultry products, and table eggs that had the effect of prohibiting imports of these products from the United States. In 2008, U.S. and Salvadoran officials agreed on the content of U.S. Department of Agriculture (USDA) export certificates for poultry, poultry products, and table eggs. El Salvador subsequently opened its CAFTA-DR poultry TRQ and began permitting imports of U.S. poultry and poultry products accompanied by the appropriate USDA export certificate. El Salvador also agreed to conduct inspections at the request of U.S. table egg production facilities and to issue import permits for imports of table eggs from U.S. facilities that it had inspected and approved and which are accompanied by the appropriate

USDA export certificate. The United States will continue to closely monitor El Salvador's implementation of its commitments on poultry, poultry products, and table eggs.

Importers must deliver samples of all foods for laboratory testing to the Ministry of Public Health, which, upon approval, issues the product registration numbers that allow them to be sold at retail outlets. Some processed foods approved for use in the United States were rejected after further analysis in El Salvador, thereby barring their sale. The United States has obtained access for U.S. products rejected by the Ministry of Public Health testing on a case-by-case basis. The United States continues to engage El Salvador on this issue.

In 2008, El Salvador and the other four Central American Parties to the CAFTA-DR notified to the WTO a set of microbiological criteria for all raw and processed food products imported into any of these countries. The United States has some concerns with these criteria and in May 2008 submitted comments to the five countries. The Central American countries are currently evaluating possible amendments to the proposed criteria.

GOVERNMENT PROCUREMENT

Government purchases of goods and services, including construction services, are usually open to foreign bidders.

The Public Sector Procurement and Contracting Law applies to the central government as well as to autonomous agencies and municipalities. The Ministry of Finance's Public Administration Procurement and Contracting Regulatory Unit establishes procurement and contracting policy, but all government agencies implement that policy through their own procurement and contracting units. Under the law, government purchases worth more than approximately $108,000 must be announced publicly and are subject to open bidding; those worth approximately $13,600 or more must also be announced publicly, but may be subject to bidding by invitation only; and for smaller purchases, government agencies are only required to evaluate at least three offers for quality and price. If a domestic offer is determined to be equal to a foreign offer, the government must give preference to the domestic offer. Under certain provisions of the law, such as "urgent" or "emergency" procurements, the head of a government agency or ministry may intervene to award the procurement to a supplier. For government procurement conducted with external financing or donations, separate procurement procedures may apply.

Under the CAFTA-DR, procuring entities must use fair and transparent procurement procedures, including advance notice of purchases and timely and effective bid review procedures, for procurement covered by the Agreement. Under the CAFTA-DR, U.S. suppliers are permitted to bid on procurements of most Salvadoran government entities, including key ministries and state-owned enterprises, on the same basis as Salvadoran suppliers. For procurement covered by the CAFTA-DR, El Salvador entities cannot apply domestic preferences. The anticorruption provisions in the Agreement require each government to ensure under its domestic law that bribery in matters affecting trade and investment, including in government procurement, is treated as a criminal offense or is subject to comparable penalties.

El Salvador is not a signatory to the WTO Agreement on Government Procurement.

EXPORT SUBSIDIES

El Salvador provides a 6 percent tax rebate on exports shipped outside Central America if the goods have undergone a transformation process that adds at least 30 percent to the original value. Firms operating in free trade zones enjoy a 10 year exemption from income tax as well as duty-free privileges.

Under the CAFTA-DR, El Salvador may not adopt new duty waivers or expand existing duty waivers that are conditioned on the fulfillment of a performance requirement (*e.g.*, the export of a given level or percentage of goods). However, under the CAFTA-DR, El Salvador may maintain such measures through 2009, provided that it maintains the measures in accordance with its obligations under the WTO Agreement on Subsidies and Countervailing Measures.

INTELLECTUAL PROPERTY RIGHTS (IPR) PROTECTION

In December 2005, El Salvador amended the Intellectual Property Promotion and Protection Law, Law of Trademarks and Other Distinctive Signs, and Penal Code to implement its CAFTA-DR obligations on IPR. The CAFTA-DR provides for improved standards for the protection and enforcement of a broad range of IPR, which are consistent with U.S. and international standards, as well as with emerging international standards, of protection and enforcement of IPR. Such improvements include state-of-the-art protections for patents, trademarks, undisclosed test and other data submitted to obtain marketing approval for pharmaceuticals and agricultural chemicals, and digital copyrighted products such as software, music, text, and videos; and further deterrence of piracy and counterfeiting.

Despite these efforts, the piracy of optical media, both music and video, in El Salvador remains a concern. Optical media imported from the United States by pirates in El Salvador are being used as duplication masters. Concern has also been expressed about inadequate enforcement of cable broadcast rights and the competitive disadvantage it places on legitimate providers of this service. During 2008, the police seized 939,678 optical media, including CDs, DVDs, software, and burners, and made 184 arrests related to optical media piracy.

SERVICES BARRIERS

Under the CAFTA-DR, El Salvador granted U.S. services suppliers substantial access to its services market, including financial services. El Salvador maintains few barriers to services trade. Foreign investors are limited to 49 percent of equity ownership in free reception television and AM/FM radio broadcasting. There are no such restrictions on cable television ownership. Notaries must be Salvadoran citizens.

In October 2007, El Salvador adopted an International Services Law. The law regulates the establishment and operation of services parks and centers with incentives similar to those received by the free zones, including tax exemptions for developers, administrators, and service companies. The law covers international distribution, international logistics operations, call centers, information technology, development and research, marine vessels and airships repair and maintenance, entrepreneurial processes, hospital medical services, and international financial services. Services firms operating under the International Services Law are exempted from income and municipal taxes as well as from tariffs on imports of capital and intermediate goods.

In July 2008, El Salvador began imposing a $0.04 per minute tax on international telephone calls that terminate in El Salvador. Some telephone traffic from other Central American countries is exempt under an existing regional telecommunications agreement. The tax must be paid within the first 10 business days of the beginning of the month subsequent to the month in which the calls were terminated. U.S. telecommunications operators have raised concerns that the increased cost of terminating calls into El Salvador will result in an increase in long distance rates, which will negatively impact U.S. consumers.

INVESTMENT BARRIERS

The CAFTA-DR establishes a more secure and predictable legal framework for U.S. investors operating in El Salvador. Under the CAFTA-DR, all forms of investment are protected including enterprises, debt, concessions, contracts, and intellectual property. U.S. investors enjoy, in almost all circumstances, the right to establish, acquire, and operate investments in El Salvador on an equal footing with local investors. Among the rights afforded to U.S. investors are due process protection and the right to receive fair market value for property in the event of an expropriation. Investor rights are protected under the CAFTA-DR through an impartial procedure for dispute settlement that is fully transparent and open to the public. Submissions to dispute panels and dispute panel hearings will be open to the public, and interested parties will have the opportunity to submit their views.

There are few formal investment barriers in El Salvador, except as noted in the services section above. However, some U.S. investors complain that judicial and regulatory weaknesses limit or inhibit their investment in El Salvador. In addition, the United States has expressed concerns regarding the impact of duplicative regulations and the regulator’s seemingly arbitrary decision-making processes and how these impact U.S. electric energy investments in El Salvador.

In December 2008, a North American mining company with U.S. ownership interests submitted to the government of El Salvador a notice of its intent to submit a claim to arbitration under the investor-state dispute settlement procedures in the investment chapter of the CAFTA-DR. The company alleges that El Salvador indirectly expropriated the company’s assets by failing to act on the company’s requests for mining permits within the time required by Salvadoran law.

ELECTRONIC COMMERCE

The CAFTA-DR includes provisions on electronic commerce that reflect its importance to global trade. Under the CAFTA-DR, El Salvador has committed to provide nondiscriminatory treatment to digital products, and not to impose customs duties on digital products transmitted electronically.