EL SALVADOR

TRADE SUMMARY

The U.S. trade deficit with El Salvador was $185 million in 2004, a decrease of $14 million from $199 million in 2003. U.S. goods exports in 2004 were $1.9 billion, up 2.6 percent from the previous year. Corresponding U.S. imports from El Salvador were $2.1 billion, up 1.6 percent. El Salvador is currently the 47th largest export market for U.S. goods.

The stock of U.S. foreign direct investment (FDI) in El Salvador in 2003 was $779 million, up from $684 million in 2002.

IMPORT POLICIES

Free Trade Agreement

The United States engaged in free trade agreement negotiations with five Central American countries (Costa Rica, El Salvador, Guatemala, Honduras, and Nicaragua) in 2003. The United States concluded negotiations with El Salvador, Guatemala, Honduras, and Nicaragua in December 2003 and with Costa Rica in January 2004. In May 2004, the six countries signed the United States – Central America Free Trade Agreement. During 2004, the United States and the Central American countries engaged in negotiations with the Dominican Republic to integrate that country into the free trade agreement. On August 5, 2004, the seven countries signed the Dominican Republic – Central America – United States Free Trade Agreement (CAFTA-DR). El Salvador ratified the Agreement in December 2004 and Honduras ratified in March 2005. Legislative approval is pending in the United States and the other signatories to the Agreement.

The CAFTA-DR will remove barriers to trade with and investment in the region and will further regional economic integration. The CAFTA-DR will also require the Central American countries and the Dominican Republic to undertake needed reforms to confront many of the problems noted below in areas including: customs administration; protection of intellectual property rights; services, investment, and financial services market access and protection; government procurement; sanitary and phytosanitary (SPS) barriers; and other non-tariff barriers.

Tariffs

Most of El Salvador's tariffs do not exceed the maximum common external tariff of 15 percent established by the Central American Common Market (CACM), of which it is a member. There are several exceptions, however. Among these, tariffs on new and used finished clothing are generally 25 percent, while tariffs on fabrics which are not covered by CBI benefits can run 20 percent or more. Vehicles are assessed a 30 percent duty. Agricultural products face the highest tariffs. Dairy, rice and pork products are assessed a 40 percent duty, while the poultry tariff is higher. Alcoholic beverages are subject to a 30 percent duty, a specific tax based on alcoholic content, and an *ad valorem* 20 percent sales tax.

Under the CAFTA-DR, about 80 percent of U.S. industrial and commercial goods will enter the region duty-free, with the remaining tariffs being eliminated within ten years. Nearly all textile and apparel goods that meet the Agreement's rules of origin will be duty-free and quota-free immediately, promoting new opportunities for U.S. and regional fiber, yarn, fabric and apparel manufacturing companies. (The Agreement's tariff treatment for textile and apparel goods may be made retroactive to January 1, 2004.)

Under the CAFTA-DR, El Salvador will eliminate its tariffs on nearly all agricultural products within fifteen years (18 years for rice and chicken leg quarters and 20 years for dairy products). For the most sensitive products, tariff rate quotas will permit some immediate zero-duty access for specified quantities during the tariff phase-out period, which will expand over time. El Salvador will liberalize trade in white corn through expansion of a TRQ, rather than by tariff reductions.

The Agreement also requires transparency and efficiency in administering customs procedures, including the CAFTA-DR rules of origin. El Salvador committed to ensure greater procedural certainty and fairness and all Parties agreed to share information to combat illegal transshipment of goods.

Non-Tariff Measures

Rice and pork are both subject to import quota systems in addition to 40 percent duties. Rice millers are required to buy rice locally. When there is insufficient local supply, the Ministry of Agriculture allows imports under the quota, and if after the import quota has been exhausted, there is still a need for imported rice, rough or milled rice can be imported without limit, subject to a 40 percent duty. Pork importers face similar requirements to first buy locally and only import if a shortage remains after domestic supplies are exhausted, subject to a 40 percent duty. In addition, substantial tariff-rate quotas, which grow over time, were established under the CAFTA-DR for rice and pork to provide duty-free access for U.S. exports while the out-of-quota duties are phased-out.

STANDARDS, TESTING, LABELING AND CERTIFICATION

Although sanitary standards have generally not been a barrier in El Salvador, practices with respect to raw poultry are a notable exception. Since 1992, the Ministry of Agriculture has imposed arbitrary sanitary measures on U.S. poultry imports. 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 million to $10 million per year. Resolution of this issue has been a priority for U.S. agencies, which continue to work with the Government of El Salvador.

In addition, the Salvadoran government requires that rice shipments be fumigated at importers' cost unless they are accompanied by a U.S. Department of Agriculture certificate stating that the rice is free of *Tilletia barclayana*. However, since there is no chemical treatment that is both practical and effective against *Tilletia barclayana*, USDA cannot issue these certificates. El Salvador failed to notify the WTO under the Agreement on the Application of Sanitary and Phytosanitary Measures when it imposed this requirement.

Importers must deliver samples of all foods for laboratory testing to the Ministry of Public Health, which, upon approval, issues the product registration numbers which allow them to be sold at retail outlets. Some U.S. processed foods that were approved in the United States were rejected after analysis in El Salvador, thereby barring their sale. The United States and the Ministry of Public Health initiated discussions on this issue in 2002. The U.S. Embassy has been able to obtain access for U.S. products rejected by the Ministry of Public Health testing on a case-by-case basis. At present, there is not yet a standard regulation allowing entry of U.S.-approved products. The CAFTA-DR provides an opportunity for the United States to engage El Salvador in several venues, including the SPS and Trade Capacity Working Groups established under the Agreement, and fosters significant movement toward the establishment of standard regulations for the import of foreign food products. A prime example is the work being done on the recognition of the equivalence of the U.S. inspection system for meat, dairy and poutry (see below).

All imports of fresh food, agricultural commodities, and live animals must have a sanitary certificate from the Ministry of Agriculture and the Ministry of Public Health. Basic grains must have import licenses from the Ministry of Agriculture, while dairy products require import licenses from the Ministry of Public Health. Consumer products require a certificate showing approval by U.S. health authorities for public sale.

The United States has raised concerns regarding the potentially discriminatory effects of a proposed Salvadoran technical standard for distilled spirits. U.S. industry has expressed concern with El Salvador's proposed standards for rum and *aguardiente*. However, the five Central American countries, including El Salvador, are in the process of developing common standards for several products, including distilled spirits, which could serve to increase market access and facilitate trade. U.S. industry also welcomes El Salvador's commitment under CAFTA-DR to explicitly recognize Bourbon and Tennessee whiskey as distinctive products of the United States.

When the United States and Central America launched the free trade agreement negotiations, they initiated an active working group dialogue on SPS barriers to agricultural trade that met alongside the negotiations to facilitate market access. The objective was to leverage the impetus of active trade negotiations to seek difficult changes to the Central American countries' SPS regimes. Through the work of this group, El Salvador has committed to resolve specific measures restricting trade between El Salvador and the United States. In particular, for meat, dairy, and poultry, El Salvador will move toward recognizing import eligibility for all plants inspected under the U.S. food safety and inspection system.

GOVERNMENT PROCUREMENT

El Salvador is not a party to the WTO Agreement on Government Procurement. However, 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. The CAFTA-DR requires fair and transparent procurement procedures, including advance notice of purchases and timely and effective bid review procedures. Under the CAFTA-DR, U.S. suppliers will be permitted to bid on procurements covered by the Agreement for most Salvadoran government entities, including key ministries and state-owned enterprises on the same basis as Salvadoran suppliers. The anti-corruption provisions in the Agreement require each government to ensure that bribery in trade-related matters, including in government procurement, is treated as a criminal offense, or is subject to comparable penalties, under its law.

EXPORT SUBSIDIES

El Salvador gives a six percent tax rebate on exports shipped outside the Central American area based on the F.O.B port of exit value of the goods. The rebate is not granted to exports of coffee, sugar, or cotton unless these products have undergone a transformation process that adds at least 30 percent to the original value. Assembly plants outside of free trade zones (maquilas) are eligible if they meet the criteria for 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. Under the CAFTA-DR, El Salvador may not adopt new duty waivers or expand existing duty waivers conditioned on the fulfillment of a performance requirement (e.g., the exportation of a given level or percentage of goods). El Salvador may maintain existing duty waiver measures through 2009 provided such measures are consistent with its WTO obligations.

INTELLECTUAL PROPERTY RIGHTS (IPR) PROTECTION

Criminal enforcement of IPR laws at the Attorney General's office is handled by the Crimes Against Private Property and Intellectual Property Unit, where 5 of the approximately 25 prosecutors are assigned to IPR cases, but not necessarily full time. The National Police established an IPR unit that supports the Attorney General's office, but also conducts its own investigations and raids. The National Health Council has administrative enforcement authority for cases involving pharmaceuticals and other intellectual property issues related to public health.

CAFTA-DR obligations would strengthen El Salvador’s IPR protection regime to conform with, and in many areas exceed, WTO norms. CAFTA-DR obligations would also provide stronger deterrence against piracy and counterfeiting by criminalizing end user piracy and requiring El Salvador to authorize the seizure, forfeiture, and destruction of counterfeit and pirated goods and the equipment used to produce them. The CAFTA-DR text also mandates both statutory and actual damages for copyright and trademark infringement which would ensure that monetary damages can be awarded even when it is difficult to assign a monetary value to the violation.

Patents

The 1993 Intellectual Property Protection Law and El Salvador's acceptance of the disciplines in the TRIPS Agreement addressed several deficiencies in the patent regime. The 1993 law lengthened patent terms to 20 years from the application filing date. Although pharmaceutical patent terms were kept at 15 years, the Salvadoran government's Registry for Intellectual Property issues 20 year patents for pharmaceutical products in practice, which start on the filing date of the application. A major concern for U.S. pharmaceutical and agricultural chemical companies is the lack of data protection in El Salvador for undisclosed test data submitted for the marketing approval of a pharmaceutical or agricultural chemical product. Implementation of CAFTA-DR obligations will ensure adequate and effective protection of such data from disclosure and unfair commercial use.

Copyrights

After a sharp decline attributable to tough enforcement, video piracy in El Salvador returned to high levels in 2004. The main form of piracy is optical discs in DVD-R format offered by video clubs before the local theatrical release. Optical media imported from the United States by pirates is being used as duplication masters. While video piracy is the main concern, there has also been concern expressed about inadequate enforcement of cable broadcast rights and the competitive disadvantage it places on legitimate providers of this service.

Trademarks

In 2002, El Salvador's Legislative Assembly passed the Law of Trademarks and Other Distinctive Signs. The law provides for new protections against bad-faith registration of famous marks. Under the law, the National Registry of Intellectual Property requires that applicants show that they either own or have permission to register the famous mark. There were 25 complaints filed in 2004 with the Attorney General’s office for counterfeiting or illegal use of trademarks. There were 54 raids to seize products with such trademarks. During 2003, there was progress in a significant intellectual property dispute involving trademark and copyright infringement by an ex-franchisee. The case, however, is still not fully resolved. Judicial enforcement continues to be the weakest pillar of intellectual property protection in El Salvador, but CAFTA-DR IPR enforcement provisions are expected to help reduce trademark infringement.

SERVICES BARRIERS

El Salvador maintains few barriers to services trade. El Salvador has accepted the Fifth Protocol to the WTO 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 television and AM/FM radio broadcasting. There are no such restrictions on cable television ownership. Notaries must be Salvadoran citizens. Under the CAFTA-DR, El Salvador will accord substantial market access in services across its entire services regime, subject to very few exceptions. In addition, U.S. financial service suppliers will have full rights to establish subsidiaries, joint ventures or branches for banks and insurance companies.

INVESTMENT BARRIERS

There are few formal investment barriers in El Salvador. However, U.S. investors complain that judicial and regulatory weaknesses limit their investment in El Salvador. The United States has raised concerns about the impact of re-regulation of the electric power sector on U.S. electric energy investors in El Salvador. A U.S. long distance telephone service provider complained that the dominant fixed-line telephone company refuses to sign an interconnection agreement with it on terms already extended to another market entrant, as required by Salvadoran law.

The first case of commercial arbitration in El Salvador involved a U.S. firm and the parastatal water company. The arbitration panel ruled in favor of the U.S-owned firm, but a legal challenge by the water company relating to the bidding process led the Supreme Court to suspend the proceedings pending a review of the case.

The United States and El Salvador signed a Bilateral Investment Treaty (BIT) in 1999. The United States and El Salvador each ratified the BIT in 2001 but did not exchange the instruments of ratification necessary to bring the treaty into force. When CAFTA-DR enters into effect, the investment chapter will provide for protection of U.S. investors comparable to those that were included in the 1999 BIT. Under the CAFTA-DR, all forms of investment will be protected, including enterprises, debt, concessions, contracts and intellectual property. U.S. investors will 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 protections and the right to receive a fair market value for property in the event of an expropriation. Investor rights will be protected by an effective, impartial procedure for dispute settlement that is fully transparent. Submissions to dispute panels and panel hearings will be open to the public, and interested parties will have the opportunity to submit their views.