

EL SALVADOR

TRADE SUMMARY

The United States had a trade deficit with El Salvador of \$196 million in 2003, a decrease of \$123 million from \$318 million in 2002. U.S. goods exports in 2003 were \$1.8 billion, up 9.6 percent from \$1.7 billion the previous year. Corresponding U.S. imports from El Salvador were \$2.0 billion up \$37 million from 2002. El Salvador is currently the 43rd largest export market for U.S. goods.

The stock of U.S. foreign direct investment (FDI) in El Salvador in 2002 was \$580 million, a 60.7 percent increase from 2001.

IMPORT POLICIES

Free Trade Agreement

The United States and four Central American countries (El Salvador, Guatemala, Honduras, and Nicaragua) concluded negotiations on the U.S.-Central American Free Trade Agreement (CAFTA) in December 2003. The United States and Costa Rica on January 25 finalized Costa Rica's participation in the CAFTA. The United States and the Dominican Republic concluded market access negotiations in March 2004 to integrate the Dominican Republic into the CAFTA.

The CAFTA will not only liberalize bilateral trade between the United States and the region, but will also further integration efforts among the countries of Central America, removing barriers to trade and investment in the region by U.S. companies. The CAFTA will also require the countries of Central America to undertake needed reforms to alleviate many of the systemic problems noted below in areas including customs administration; protection of intellectual property rights; services, investment, and financial services market access and protection; government procurements; sanitary and phytosanitary (SPS) barriers; other non-tariff barriers; and other areas.

Tariffs

As a member of the Central American Common Market (CACM), El Salvador's tariffs do not exceed the maximum common external tariff of 15 percent. Certain products, however, remain subject to tariffs above this tariff ceiling. Salvadoran imports of clothing, certain agricultural and meat products, vehicles, and certain other items are subject to tariffs ranging from 15 percent to 30 percent -- and in a few significant cases even higher. Tariffs on new and used finished clothing are generally 25 percent. Tariffs on fabrics range from 5 percent to 20 percent, with some exceptions. Once CAFTA goes into effect, about 80 percent of U.S. industrial and commercial goods will enter El Salvador duty free, with the remaining tariffs on such goods being eliminated within ten years. Textiles and apparel will be duty-free and quota-free immediately if they meet the Agreement's rule of origin, promoting new opportunities for U.S. and Central American fiber, yarn, fabric and apparel manufacturing.

Agricultural products face the highest tariffs -- duties up to 40 percent are levied on certain food imports and alcoholic beverages. Dairy, rice and pork products are assessed a 40 percent duty, while the poultry tariff is higher. Alcoholic beverages are subject to 30 percent duty, a consumption tax based on alcoholic content, and a special 20 percent sales tax.

El Salvador implemented the WTO Agreement on Customs Valuation in March 2002.

The CAFTA will eliminate most tariffs immediately, and will establish duty free bilateral trade in consumer and industrial goods within 10 years and virtually all agricultural products within a maximum of fifteen years (dairy in 20 years and rice and poultry in 18). The Agreement requires transparency and

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efficiency in administering customs procedures, including the CAFTA rules of origin. El Salvador committed to ensure procedural certainty and fairness and all parties agree to share information to combat illegal transshipment of goods.

Non-tariff Measures

Rice and pork are both subject to import quota systems and 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 after the import quota has been exhausted and there is still a need for imported rice, rough or milled rice can be freely imported, subject to a 40 percent duty. Pork importers face a similar arrangement to first buy locally, then import, subject to a 40 percent duty. Under the CAFTA, El Salvador committed to a 15-year phase-out for all tariffs on pork, except for bacon and most offal, which will be eliminated immediately. Only a fixed part of the TRQ will remain subject to a performance requirement, and the requirement will be eliminated in 15 years. Tariffs for rice will also be phased out over a 15-year period with no performance requirements.

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. These sanitary restrictions call for zero tolerance or negative laboratory tests for diseases such as avian adenovirus, chicken anemia, and salmonella. These diseases, common worldwide, are not recognized as list "A" diseases by the International Office of Epizootics. 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 ongoing talks parallel to the CAFTA.

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. The CAFTA chapter on sanitary and phytosanitary (SPS) measures provides that the signatory countries accept each other's mechanisms for inspection.

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 the imported goods 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. There is not yet a standard regulation allowing entry of U.S.-approved products, but implementation of the CAFTA agreement will require the acceptance of the equivalence in testing, which will assure that testing done in the United States will be accepted in the other countries.

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

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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.

Under the CAFTA, El Salvador reaffirmed its commitment to apply the science-based disciplines of the WTO Agreement on Sanitary and Phytosanitary (SPS) Measures. El Salvador will move toward recognizing export eligibility for all plants inspected under the U.S. food safety and inspection system. Through the work of this group, additional commitments to resolve specific unjustified measures restricting trade between El Salvador and the United States have also been agreed. When the United States and Central America launched the CAFTA 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 countries' SPS regimes. The SPS Working Group remains committed to continue working on resolution of outstanding issues even after the negotiations concluded.

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 party to the WTO Agreement on Government Procurement.

Under the CAFTA, U.S. suppliers would be granted non-discriminatory rights to bid on contracts from most Central American government entities, including key ministries and state-owned enterprises. The CAFTA requires fair and transparent procurement procedures, such as advance notice of purchases and timely and effective bid review procedures. The CAFTA anti-corruption provisions ensure that bribery in trade-related matters, including in government procurement, is specified as a criminal offense under Central American and U.S. laws.

EXPORT SUBSIDIES

El Salvador gives a six percent tax rebate on exports shipped outside the Central American area based on the F.O.B 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 (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. The CAFTA will require the elimination of WTO-illegal export subsidies.

INTELLECTUAL PROPERTY RIGHTS (IPR) PROTECTION

During 2003, there was progress in a significant intellectual property dispute, which involves trademark and copyright infringement by an ex-franchisee who continued to use the name and other protected material of a U.S. fast food franchise. The Supreme Court in July 2003 allowed the complainant to go to four of the ex-franchisee's restaurants to take down the signs and to seek redress for illegal use of intellectual property. The case, however, was still not fully resolved at year's end. The U.S. company's proprietary emblems were still being used at other restaurants. Judicial enforcement continues to be the weakest pillar of intellectual property protection in El Salvador. 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.

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The CAFTA provisions will strengthen El Salvador's IPR protection regime to conform with, and in many areas exceed, WTO norms and will criminalize end-user piracy, providing a strong deterrence against piracy and counterfeiting. The CAFTA will require El Salvador to authorize the seizure, forfeiture, and destruction of counterfeit and pirated goods and the equipment used to produce them. It will also mandate both statutory and actual damages for copyright infringement and trademark piracy. This serves as a deterrent against piracy, and ensures 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. Major U.S. pharmaceutical companies claim they face unfair competition in El Salvador from copied products because El Salvador currently does not grant data exclusivity. The CAFTA provisions will provide protections for data exclusivity when it comes into force.

Copyrights

The largest number of complaints and raids for copyright infringement involved CD piracy. As of December 3, 2003, the Attorney General's office said there had been 136 raids related to pirated CDs and cassettes. Most of these involved police going to street locations known as places where illegal CDs were sold and seizing from street vendors CDs that could be identified as illegal copies. In these street seizures, arrests are usually not made. Of the 33 complaints filed at the Attorney General's office concerning copyright infringement, 13 involved illicit copying operations for making pirated copies of CDs and cassettes. In 2003, for the second year in a row, the largest number of criminal cases was for music compact disc (CD) piracy. There were also 20 complaints filed for other kinds of copyright violations. Eight complaints were filed for software piracy; four for copying of books, six for the illegal use of satellite signals carrying copyrighted materials, and two for copying videos. Eight raids were conducted in relation to these 20 cases. The CAFTA enforcement provisions are designed to help reduce copyright piracy.

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. As of December 3, 2003, there were 14 complaints filed with the Attorney General's office for counterfeiting or illegal use of trademarks. There were 11 raids to seize products with such trademarks. The CAFTA enforcement provisions are designed to help reduce trademark piracy.

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 TV and AM/FM radio broadcasting. There are no such restrictions on cable television ownership. Notaries

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must be Salvadoran citizens. Under the CAFTA, 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

The United States has raised concerns about the re-regulation of the electric power sector impacting U.S. electric energy investors in El Salvador. The United States and El Salvador signed a Bilateral Investment Treaty (BIT) in 1999, but the ratification process was not completed. When it enters into effect, the investment chapter of the CAFTA will provide for protection of U.S. investors analogous to those that were included in the 1999 BIT. Under the CAFTA, 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 the Central American countries 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 backed 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.