

EL SALVADOR

TRADE SUMMARY

The United States ran a trade deficit with El Salvador of \$318 million in 2002, an increase of \$197 million from \$121 million in 2001. U.S. goods exports in 2002 were \$1.7 billion, down 5.4 percent from the previous year. Corresponding U.S. imports from El Salvador were \$2.0 billion, up 5.4 percent. El Salvador is currently the 42nd largest export market for U.S. goods.

The stock of U.S. foreign direct investment (FDI) in El Salvador in 2001 was \$657 million, down from \$739 million in 2000.

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. Certain products, however, 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 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 15 percent to 20 percent, with some exceptions.

The highest tariffs -- up to 40 percent -- are levied on certain food imports and alcoholic beverages. Dairy and meat products are assessed a 40 percent *ad valorem* duty; beef a 30 percent duty. Alcoholic beverages are subject to 30 percent *ad valorem* duty, a consumption tax based on alcoholic content, and a special 20 percent sales tax.

Non-tariff Measures

Rice and pork are both subject to import quota schemes and 40 percent duties. Rice millers are required to buy rice locally. When there is insufficient local supply, the Ministry of Agriculture operates an import quota system. Once the import quota has been exhausted, 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.

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

STANDARDS, TESTING, LABELING AND CERTIFICATION

Although sanitary standards have generally not been a barrier, 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 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 million to \$10 million per year.

The Salvadoran government requires that rice shipments be accompanied by a U.S. Department of Agriculture certificate stating that the rice is free of *Tilletia Barclayana* to avoid fumigation at the cost of the importer. There is no chemical treatment that is both practical and effective against *Tilletia Barclayana*. El Salvador failed to notify the WTO under the Agreement on the Application of Sanitary and Phytosanitary Measures when they 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 that allow the imported goods to be sold at retail outlets. There are concerns about the quality of the local laboratory analysis of processed foods. 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 have initiated discussions on this issue.

All imports of fresh food, agricultural commodities, and live animals must have a

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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 indicating that they were approved 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.

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 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.

INTELLECTUAL PROPERTY RIGHTS (IPR) PROTECTION

During 2002, the Salvadoran government enacted legislation that improved its legal framework for intellectual property rights protection, established the separate Registry for Intellectual Property, and made some advances in intellectual property law enforcement. On the other hand, the Attorney General eliminated the independent Intellectual Property Crimes Unit by merging it with the larger Crimes Against Personal Property Division and transferring the intellectual property unit chief to another division. Judicial enforcement of

intellectual property laws continues to be the weakest pillar of intellectual property protection in El Salvador. In 2002, CD piracy surpassed software piracy as the principal focus of the Attorney General's enforcement efforts.

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. El Salvador does not have a legal regime to protect against unfair commercial use of confidential test data that is provided to the government for the purpose of obtaining marketing approval.

Copyrights

The Salvadoran government conducted an audit in 2002 of the government's computers and committed to legalize any illegal software. CD piracy became a larger focus than software piracy in 2002. Of the 73 raids against piracy conducted as of December 6, 2002 by the Attorney General's office, 42 were against CD copying operations or vendors of pirated CDs. Thirteen were against software piracy. Despite these and other positive developments, U.S. industry estimates business software piracy losses at \$9.8 million in 2001 and music piracy losses at \$5 million.

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.

SERVICES BARRIERS

El Salvador maintains few barriers to services trade. The country 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.

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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, but the ratification process is not yet complete.

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 valid franchise contract and could continue to use the multinational company's trademark signs and product names at three restaurants in operation when the franchise 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 was appealed and partially reversed by an appeals court.