EL SALVADOR

TRADE SUMMARY

The U.S. goods trade balance with El Salvador went from a trade deficit of $134 million in 2005 to a trade surplus of $301 million in 2006. U.S. goods exports in 2006 were $2.2 billion, up 16.3 percent from the previous year. Corresponding U.S. imports from El Salvador were $1.9 billion, down 6.7 percent. El Salvador is currently the 51st largest export market for U.S. goods.

The stock of U.S. foreign direct investment in El Salvador in 2005 was $928 million (latest data available), up from $842 million in 2004.

IMPORT POLICIES

Free Trade Agreement

The United States concluded free trade agreement 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 integrated the Dominican Republic 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).

All of the signatory countries have ratified the agreement with the exception of Costa Rica. The agreement entered into force for El Salvador on March 1, 2006. The agreement also has entered into force for the Dominican Republic, Guatemala, Honduras and Nicaragua.

The agreement removes barriers to trade and investment in the region and will strengthen regional economic integration. The CAFTA-DR also requires the Central American countries and the Dominican Republic to undertake needed reforms to provide market liberalization as well as greater transparency and certainty in a number of areas, including: customs administration, protection of intellectual property rights, services, investment, financial services, government procurement, and sanitary and phytosanitary (SPS) measures.

Tariffs

As a member of the Central American Common Market, El Salvador agreed in 1995 to reduce its common external tariff to a maximum of 15 percent. However, there are several exceptions. Some goods, such as new and used automobiles, are subject to much higher tariffs. Tariffs on new and used finished clothing are generally 25 percent, while tariffs on fabrics are 20 percent or more. Vehicles are assessed a 30 percent duty. Agricultural products face the highest tariffs. Dairy, rice, pork and poultry products are assessed a 40 percent duty. In addition to a value-added tax of 13 percent paid on all goods and services, alcoholic beverages are subject to a 20 percent to 40 percent duty, as well as domestic taxes that include a specific tax based on alcoholic content and a 20 percent sales tax.

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 over ten years. Nearly all textile and apparel goods that meet the agreement's rules of origin are now traded duty-free and quota-free, 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 is retroactive to January 1, 2004.

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 within 15 years (18 years for rice and chicken leg quarters and 20 years for dairy products). For the most sensitive 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.

The agreement also requires transparency and efficiency in administering customs procedures, including the CAFTA-DR rules of origin. Under the CAFTA-DR, El Salvador committed to ensuring greater procedural certainty and fairness in the administration of these procedures, and all 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.

STANDARDS, TESTING, LABELING, AND CERTIFICATION

Although sanitary standards have generally not been a barrier in El Salvador, practices with respect to raw poultry and eggs are notable exceptions. Since 1992, the Ministry of Agriculture has imposed restrictions on U.S. raw poultry and egg imports. El Salvador has yet to provide a scientific justification for these measures, which do not appear to be based on relevant international standards. Furthermore, the Salvadoran government does not appear to apply these same restrictions on domestic production, raising potential national treatment concerns. As a result of these measures, the United States has been unable to export raw poultry or eggs to El Salvador. U.S. industry estimates the value of lost U.S. poultry and eggs exports at $5 million to $10 million per year. Resolution of this issue is a priority for the United States.

The Salvadoran government requires that rice shipments be fumigated at the importers' cost unless they are accompanied by a U.S. Department of Agriculture (USDA) 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 this measure to the World Trade Organization (WTO) SPS Committee.

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.

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. At present, there is no standard regulation allowing entry of U.S.-approved products. 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 and the Ministry of Public Health initiated discussions on this issue in 2002. Through the CAFTA-DR, the United States continues to engage El Salvador on this issue in venues such as the SPS and Trade Capacity Building Committees. In addition, in connection with the CAFTA-DR, El

Salvador agreed to recognize the equivalence of the U.S. food safety and inspection system for meat, poultry and dairy products, thereby eliminating the need for plant-by-plant inspection.

The five Central American countries, including El Salvador, are in the process of developing common standards for the importation of several products, including distilled spirits, which should facilitate trade. Also, El Salvador has withdrawn a previous proposed standard for alcoholic beverages that was opposed by U.S. industry.

GOVERNMENT PROCUREMENT

El Salvador is not a signatory to the WTO Agreement on Government Procurement. However, government purchases and construction contracts are usually open to foreign bidders.

The 2000 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 have their own procurement and contracting units to implement that policy. 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, but may be subject to bidding by invitation only; and for smaller purchases, government agencies must evaluate at least three offers for quality and price. If a domestic offer is assessed as equal to a foreign offer, the government must give preference to the domestic offer. Under the law, the head of a government agency or ministry may intervene to award a procurement or contract to a seller who may not have otherwise been selected. For government procurement made using external financing or donations, separate procurement procedures may apply.

The CAFTA-DR requires the use of 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 will be permitted to bid on procurements of 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 under its domestic law that bribery in trade-related matters, including in government procurement, is treated as a criminal offense, or is subject to comparable penalties.

EXPORT SUBSIDIES

El Salvador gives a 6 percent tax rebate on exports shipped outside Central America if they 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 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

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 intellectual property rights (IPR). The CAFTA-DR provides for improved standards for the protection and enforcement of a broad range of intellectual property rights, which are consistent with U.S. standards of protection and enforcement and with emerging international standards. Such improvements include state-of-the-art protections for digital products such as U.S. software, music, text and videos; stronger protection for U.S. patents, trademarks and test data, including an electronic system for the registration and maintenance of trademarks; and further deterrence of piracy and counterfeiting.

The piracy of optical media, both music and video, remains a concern in El Salvador. Optical media imported from the United States by pirates are being used as duplication masters. 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. Using *ex-officio* authority granted by the December 2005 amendments to the Penal Code, the police and Attorney General's Office seized 194,610 optical media in 2006 and made several arrests.

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 CAFTA-DR commitments on financial services into effect. 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. The CAFTA-DR granted substantial market access across the entire services regime, offering new access in sectors such as telecommunications, express delivery, computer and related services, tourism, energy, transport, construction and engineering, financial services, insurance, audio/visual and entertainment, professional, environment, and other sectors.

A U.S. long distance telephone service provider has alleged 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. A decision on this case is still pending before the Supreme Court of El Salvador. Separately, in January 2006, the government amended the telecommunications law to implement its CAFTA-DR obligations on interconnection, bundling, resale and other issues important to opening the sector to U.S. companies. These reforms went into effect January 1, 2007.

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, contract 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 a fair market value for property in the event of an expropriation. Investor rights are protected under the CAFTA-DR by an effective, 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. However, U.S. investors complain that judicial and regulatory weaknesses limit their investment in El Salvador.

El Salvador is developing a cost-based pricing model for the electricity sector to replace the existing competition-based system. The new system would allow the adoption of long-term contracts and may alleviate current market-distorting regulations and intervention by the regulator, SIGET, as well as politicized management of hydro-electric resources by the state-owned hydropower generator CEL. The United States has expressed its concerns regarding the impact of duplicative regulations and the regulator's seemingly arbitrary decision-making processes and how they are deterrents to U.S. electric energy investments in El Salvador.

The first case of commercial arbitration in El Salvador involved a U.S. firm contracted by the parastatal water company for infrastructure work. The water company refused to pay for work performed, claiming there were irregularities in the procurement process. The arbitration panel ruled in favor of the U.S firm in 2004, but in late 2006 the Supreme Court in El Salvador overturned the arbitral decision and ruled that the U.S. firm's contract with the water company was invalid. No further arbitration cases have been adjudicated in El Salvador, at least in part because potential clients lack confidence that the courts will respect arbitral decisions.

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 non-discriminatory treatment to U.S. digital products, not to impose customs duties on digital products transmitted electronically, and to work together with the United States in policy areas related to electronic commerce.