EL SALVADOR

In 1996, the U.S. trade deficit with El Salvador was $2 million, a shift of $300 million from the U.S. trade surplus of $298 million in 1995. U.S. merchandise exports to El Salvador were $1.1 billion, a decrease of $39 million (3.5 percent) from the level of U.S. exports to El Salvador in 1995. El Salvador was the United States' fifty-second largest export market in 1996. U.S. imports from El Salvador were $1.1 billion in 1996, an increase of $261 million (32.1 percent) from the level of imports in 1995.

IMPORT POLICIES

El Salvador is a member of the Central American Common Market (CACM), which also includes Costa Rica, Nicaragua, Guatemala, and Honduras. CACM members are working toward the full implementation of a common external tariff (CET) ranging between 5 and 20 percent for most products. In 1995 the members of the CACM agreed to reduce the CET to between 0 and 15 percent, but allowed each member country to determine the timing of the changes. With the exception of certain items, there are no duties for products traded among CACM members.

There are no legal barriers to U.S. exports of manufactured goods or bulk, non-agricultural commodities to El Salvador. Most U.S. goods face tariffs ranging from 0 to 20 percent, with rates scheduled to fall further by 1999. While higher duties are applied to automobiles, alcoholic beverages, textiles, and some luxury items, the Government of El Salvador may incorporate these excepted products into its general tariff schedule as it implements the 1996-99 reductions.

STANDARDS, TESTING, LABELING, AND CERTIFICATION

Generally, standards have not been a barrier to the importation of U.S. consumer-ready food products. The Ministry of Health requires a "certificate of free sale" showing that the product has been approved by U.S. health authorities for public sale. Importers also may be required to deliver samples for laboratory testing, but this requirement has not been enforced. All imports of fresh foods, agricultural commodities, and live animals must be accompanied by a sanitary certificate. Basic grains and dairy products also must have import licenses.

Sanitary Restrictions on Poultry

In August 1992, the Ministry of Agriculture imposed arbitrary sanitary measures to restrict 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 disease agents are common worldwide and are not recognized as List "A" diseases by the International Office for Epizootics. Salvadoran standards are substantially in excess of what is required in the United States and other producing countries, including Canada, Japan, and the European Union. Given the ubiquitous nature of salmonella in poultry populations 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 Working Group of the Codex Committee on Food Hygiene (FAO/WHO 1979) concluded that no benefits would result for either public health or quality through the application of such microbiological criteria for raw meats and poultry. These standards are applied in a discriminatory manner by El Salvador, since domestic production is not subject to the same requirements as imports. As a result of these restrictive measures, exports of U.S. poultry to El Salvador have virtually ceased. U.S. officials have met with Salvadoran agricultural officials since November 1992 to resolve this issue, with no success to date. Salvadoran officials have acknowledged that the restrictions were imposed to keep U.S. poultry out of the local market and are not intended to operate as “normal” sanitary measures. The U.S. Embassy estimates the value of lost U.S. poultry exports at $3-5 million per year.

Phytosanitary Restrictions on Rice

Salvadoran phytosanitary restrictions require rice shipments to be free of the Tilletia Barclayana (T. Barclayana) fungus. There is no chemical treatment that is both practical and effective against T. Barclayana. The Government of El Salvador requires that rice shipments be accompanied by a U.S. Department of Agriculture (USDA) certificate stating that the rice is free of T. Barclayana. The USDA cannot issue such a certificate because T. Barclayana is well established in the Western Hemisphere and occurs in the United States, as well as in Nicaragua, Mexico, Belize, Panama, Cuba, Trinidad and Tobago, Guyana, Brazil, and Venezuela. Given the prevalence of T. Barclayana in neighboring countries and in all rice-growing regions worldwide, it is highly unlikely that the fungus does not already exist in El Salvador. El Salvador failed to notify the WTO, under the Agreement on the Application of Sanitary and Phytosanitary Measures, of the restrictions and has no risk assessment upon which to base such restrictions.

EXPORT SUBSIDIES

El Salvador offers a six percent rebate to exporters of non-traditional goods based on the f.o.b. value of the export, but exporters have found it very difficult to collect. Free trade zone operations are not eligible for the rebate but enjoy a ten-year exemption from income tax as well as duty-free import privileges.

LACK OF INTELLECTUAL PROPERTY PROTECTION

In the past year, El Salvador has taken a number of important steps to enforce the 1994 Law for the Protection and Promulgation of Intellectual Property and, in general, more adequately protect intellectual property rights (IPR). In June 1996, a special unit was created in the Attorney General’s Office that now coordinates investigations and seizures. The Criminal Investigation Division of the National Civilian Police has been granted clear authority to act in IPR cases. The National Commercial Registry has begun to carry out its legally defined responsibility to inspect for cases of copyright violation. Training programs are being developed for these institutions and for judges. In early 1997, the Salvadoran authorities moved beyond the street-vendor level and closed down a major source of pirated audio recordings. All of these moves have been important first steps in building an effective enforcement regime.

To date, most of the actions taken by Salvadoran authorities have been in the areas of video and audio recordings and clothing bearing protected trademarks. The government has announced its intention to expand enforcement efforts in 1997 to the areas of cable television, software, and pharmaceuticals. Criminal prosecutions also are anticipated.

Patents

The Law for the Protection and Promulgation of Intellectual Property and El Salvador's acceptance of the disciplines of the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPs) addressed several key areas of weakness in the patent regime. The intellectual property law lengthened patent terms to 20 years from the application filing date and broadened the definition of patentability. The law protects against parallel importation. Compulsory licensing applies only in cases of national emergency. Government officials report that they are working on a draft for a separate semiconductor layout design law.

Copyrights

El Salvador has taken significant steps to increase copyright protection in the last four years. It passed a copyright law in 1993, amended its penal code to provide for criminal penalties for copyright violations, and adhered to the Berne Convention. Computer software is also protected, as are trade secrets. However, a report prepared in 1995 by the International Intellectual Property Alliance estimated that losses in El Salvador due to copyright infringements continue, costing U.S. firms $39.3 million annually. 1996 estimates are not available.

Trademarks

Trademarks are still regulated by the Central American Convention for the Protection of Industrial Property. It is an occasional practice to license a famous trademark and then seek to profit by selling back to the legitimate owner when the legitimate owner wants to do business in El Salvador. In November 1994, El Salvador signed an amended version of the convention which, among other things, should address this issue. The revised convention will take effect if it is ratified by three of the participating Central American governments. In addition, the Government of El Salvador is currently drafting a special procedures law that will give customs officials authority to interdict merchandise for violating intellectual property rights. It will also establish a separate judicial track for IPR cases.

In addition to problems with enforcement, the Government of El Salvador suffers from antiquated and disorganized bureaucratic procedures for registering patents and trademarks that have caused delays of up to five years in granting patents and trademark registrations and adjudicating oppositions. The National Registry Office was reorganized in late 1995 in an effort to address some of these problems. El Salvador is a signatory to the Geneva Phonograms, Paris Industrial Property, and Berne Artistic and Literary Work Conventions, but it does not belong to the Plant Varieties (UPOV) or the Brussels Satellite Conventions.

El Salvador was removed from the Special 301 Watch List in July 1996, following a special out-of-cycle review. At the same time, the U.S. Government terminated its consideration of a GSP petition on intellectual property rights. El Salvador and the United States continue to work toward negotiating a bilateral agreement on intellectual property rights.

El Salvador

SERVICES BARRIERS

Restrictions on foreign banks entering El Salvador have been removed. Foreign banks now face the same requirements as Salvadoran banks and can offer a full range of services. Revisions to the 1991 Commercial Bank and Financial Institutions Law (approved in December 1995) lift restrictions on foreign investment in other local banks and further clarify the rules for opening branches in El Salvador. Foreign insurance companies can operate in El Salvador under the same conditions as local companies. Offshore companies may write policies for risks in El Salvador, an option that is commonly employed.

On October 10, 1996, the Legislative Assembly passed new legislation governing the insurance sector. The law establishes minimum requirements for net worth and capital investments, provides for a separate supervisory function, and lays out a framework for competition and transparency. The Salvadoran legal code, however, recognizes only those companies registered with the Bank Superintendency. Currently, insurance companies are regulated by the commerce code; however, the Central Bank and the Ministry of Economy have prepared legislation to regulate the operations of insurance firms and to establish a separate regulatory authority. A bill is pending before the Legislative Assembly.

INVESTMENT BARRIERS

El Salvador generally has an open investment regime. The government officially promotes foreign investment in virtually all sectors of the economy. The foreign investment law allows unlimited remittance of net profits for most types of business and manufacturing, and up to 50 percent for commercial or service companies.

On September 12, 1996, the Legislative Assembly of El Salvador passed a law to create one of the most liberal telecommunications regimes in the region. The law encourages maximum competition in all aspects of telecommunications and permits foreign investment in all areas. The only functions reserved to the government are resolution of interconnection charge disputes and spectrum allocation, and in those cases the discretionary power of the government is limited. Follow-up legislation specifically allowing the sale of the state-owned telephone company (ANTEL) was passed in November 1996. The sale of ANTEL is scheduled for March 27, 1997.

On October 10, 1996, the Legislative Assembly passed the General Law of Electricity. The passage of this law establishes the framework for the privatization of the state-owned electric company (CEL), although the actual sale will require separate legislation. Like the telecommunications law, this measure encourages maximum competition in all aspects of energy production and distribution. El Salvador’s government owned electricity distribution networks are scheduled to be sold in June 1997. Privatization of state-owned power generation plants is scheduled to take place within two years.

The United States and El Salvador are currently engaged in negotiations over the terms of the proposed U.S.-El Salvador Bilateral Investment Treaty.