GUATEMALA

In 1998, the U.S. trade deficit with Guatemala was $131 million, a decrease of $131 million from the U.S. trade deficit of $262 million in 1997. U.S. merchandise exports to Guatemala were $1.9 billion, an increase of $213 million (12.3 percent) over 1997. Guatemala was the United States' 42nd largest export market in 1998. U.S. imports from Guatemala were $2.1 billion in 1998, an increase of $82 million (4.1 percent) from the level of imports in 1997.

The stock of U.S. foreign direct investment in Guatemala amounted to $357 million in 1997, an increase of 7.9 percent from 1996. U.S. direct investment is concentrated in manufacturing, agriculture, and finance.

IMPORT POLICIES

Guatemala is a member of the Central American Common Market (CACM), which also includes Guatemala, El Salvador, Nicaragua and Honduras. CACM members are working toward the full implementation of a common external tariff (CET), and with few exceptions there are no tariffs on capital goods originating within the CACM and a maximum tariff of 15 percent on other goods originating within the CACM. Guatemala’s tariffs on goods from outside the CACM range from zero to as high as 28 percent.

Poultry Tariff Rate Quota and Customs Valuation Policies for Poultry

In October 1996 Guatemala announced a new poultry import policy that expanded the annual Tariff Rate Quota (TRQ) from 3600 MT to 7000 MT with an in-quota tariff of 15 percent. This import policy exceeds Guatemala’s negotiated World Trade Organization (WTO) obligations for poultry imports. However, notwithstanding its agreement to employ transaction value to calculate tariffs on chicken parts as part of its Uruguay Round commitments, the Government of Guatemala (GOG) continues to use a reference price. For tariff purposes, poultry parts are valued at $.56 per pound, irrespective of actual invoice price. The use of this valuation effectively doubles the tariff on poultry imports. It is estimated that elimination of this valuation policy would increase US exports by up to $10 million per year.

STANDARDS, TESTING, LABELING AND CERTIFICATION

Under Guatemalan law, food products sold in the domestic market must be tested, registered, and carry labels in Spanish. The law requires that every size or form of product sold be registered separately, even if the product content is of identical composition. Personnel trained and available to carry out this process are in short supply. Importers complain that the product registration and testing process, though not otherwise overly burdensome, is time consuming. Products are often damaged during the process and are susceptible to pilferage while awaiting completion of the tests and registration. Enforcement of the product registration and labeling requirement is irregular, but becoming more strict. If fully enforced, these requirements could restrict and/or delay the entry of an estimated $25 to $100 million of US exports.

GOVERNMENT PROCUREMENT

Though the Government Procurement Law requires all government purchases over $160,000 to be submitted for public competitive bidding to no fewer than five bidders, most government contracts are awarded without following prescribed procedures. Foreign suppliers must meet pre-qualification requirements and submit bids through locally registered representatives, a bureaucratic process which can place foreign bidders at a competitive disadvantage.

LACK OF INTELLECTUAL PROPERTY PROTECTION

Guatemala's protection of intellectual property and the enforcement of existing laws and regulations is inadequate. Pursuant to Section 182 of the Omnibus Trade and Competitiveness Act of 1988 ("Special 301"), Guatemala was placed on the Watch List in 1998 because of its failure to solve copyright protection deficiencies, improve enforcement, and dismantle market access barriers. Guatemala's continuing failure to protect and enforce its laws shows an indifference to its international obligations and bilateral commitments.

Copyrights

Guatemala passed a new Copyright Law in 1998 that protects computer software programs, but there has been virtually no enforcement by government. Although the software industry has successfully brought some civil actions against resellers of pirated software, distribution and use of illegally copied software – including use by government agencies – is commonplace. In 1992 the GOG passed a law authorizing the establishment of a regulatory agency to police the cable television industry. However, the regulatory entity has not been established and regulation of this industry is insufficient to protect US rights holders. Piracy of signals by cable system operators continues, though the unauthorized retransmission of premium channels has diminished. Local broadcast channels occasionally re-transmit premium or pay-per-view events. A new law to regulate the cable TV industry was drafted in July 1997, but there has been no action taken in the legislature. A report prepared by the International Intellectual Property Alliance (IIPA) estimates that copyright infringements in Guatemala cost U.S. firms $24.5 million in 1998.

Patents

Guatemala's patent law (153-85) is out of date and deficient in several areas, including limits on protection to only fifteen years (10 years for food, beverages, medicines, and agrochemicals), broad compulsory licensing provisions, mandatory local manufacturing of the patented product, and a lack of protection against parallel imports. Enforcement of the law is limited. A number of subject areas are not patentable, including mathematical methods, living organisms, commercial plans, and chemical compounds or compositions. Guatemala does not provide exclusive marketing rights for pharmaceutical and agricultural products, which are subject to mailbox applications, as required by the TRIPS agreement.

Trademarks

Guatemala's law provides insufficient protection for owners of well-known trademarks. Exclusive rights are granted on a first-to-file basis, thus permitting third parties to register and use (or prevent genuine trademark holder from using) internationally known trademarks. Sales of counterfeit clothing and other merchandise are common in Guatemala. Though an amendment to Guatemala's Criminal Code has made it easier for license-holders or brand owners to initiate legal action against merchants who traffic in counterfeit merchandise, not all rights holders have sufficient resources to pursue civil actions against IPR violators.

SERVICES BARRIERS

Guatemala is overdue in providing to the World Trade Organization an acceptance of the Fourth Protocol to the General Agreement on Trade in Services, which is necessary to bring its commitments on basic telecommunications services into effect. Majority foreign ownership in telecommunications services is not permitted. International traffic must be routed through the facilities of an enterprise licensed by the

Guatemalan Superintendency of Telecommunications. Commercial radio or television stations must have at least 75 percent Guatemalan ownership.

Guatemala has not given the WTO an acceptance necessary to bring into force its commitments under the Fourth Protocol to the General Agreement on Trade in Services, which embodies the WTO Basic Telecom Agreement. In December 1998 Guatemala suggested key changes to its Fourth Protocol commitments in a proposal to the WTO Council on Trade in Services. It is unclear at this time whether the WTO Council on Trade in Services will agree to the changes or, instead, request that Guatemala take whatever steps are necessary to accept the Fourth Protocol based on the commitments offered by Guatemala at the time the Basic Telecom Agreement was completed in February 1997.

Investment Barriers

Guatemala generally welcomes foreign investment and provides national treatment, though the complex and often confusing welter of laws, regulations, and red tape can sometimes be discouraging. The new Investment Law passed in 1998 addresses some of these issues, including providing for national treatment for foreign investors. However, restrictions on foreign investment remain in several sectors of the economy, including auditing, insurance, mineral exploration, forestry, and the media.

ELECTRONIC COMMERCE

There are no known tariff or non-tariff measures, burdensome or discriminatory regulations, or discriminatory taxation affecting electronic commerce.