

GUATEMALA

TRADE SUMMARY

The U.S. goods trade surplus with Guatemala was \$763 million in 2009, a decrease of \$493 million from 2008. U.S. goods exports in 2009 were \$3.9 billion, down 17.3 percent from the previous year. Corresponding U.S. imports from Guatemala were \$3.1 billion, down 9.4 percent. Guatemala is currently the 42nd largest export market for U.S. goods.

The stock of U.S. foreign direct investment (FDI) in Guatemala was \$915 million in 2008 (latest data available), up from \$614 million in 2007.

IMPORT POLICIES

Free Trade Agreement

On August 5, 2004, the United States signed the Dominican Republic-Central America-United States Free Trade Agreement (CAFTA-DR or Agreement) with five Central American countries (Costa Rica, El Salvador, Guatemala, Honduras, and Nicaragua) and the Dominican Republic (the Parties). Under the Agreement, the Parties are significantly liberalizing trade in goods and services. The CAFTA-DR also includes important disciplines relating to customs administration and trade facilitation, technical barriers to trade, government procurement, investment, telecommunications, electronic commerce, intellectual property rights, transparency, and labor and environmental protection.

The Agreement entered into force for the United States, El Salvador, Guatemala, Honduras, and Nicaragua in 2006 and for the Dominican Republic in 2007. The CAFTA-DR entered into force for Costa Rica on January 1, 2009.

In 2008, the Parties implemented amendments to several textile-related provisions of the CAFTA-DR, including, in particular, changing the rules of origin to require the use of U.S. or regional pocket bag fabric in originating apparel. The Parties also implemented a reciprocal textile inputs sourcing rule with Mexico. Under this rule, Mexico provides duty-free treatment on certain apparel goods produced in a Central American country or the Dominican Republic with U.S. inputs, and the United States provides reciprocal duty-free treatment under the CAFTA-DR on certain apparel goods produced in a Central American country or the Dominican Republic with Mexican inputs. These changes further strengthen and integrate regional textile and apparel manufacturing and create new economic opportunities in the United States and the region.

Tariffs

As a member of the Central American Common Market, Guatemala applies a harmonized external tariff on most items at a maximum of 15 percent with some exceptions.

However, under the CAFTA-DR, about 80 percent of U.S. industrial and consumer goods enter Guatemala duty-free, with the remaining tariffs phased out by 2015. Nearly all textile and apparel goods that meet the Agreement's rules of origin now enter Guatemala duty-free and quota-free, promoting new opportunities for U.S. and regional fiber, yarn, fabric, and apparel manufacturing companies.

Under the CAFTA-DR, more than half of U.S. agricultural exports now enter Guatemala duty-free. Guatemala will eliminate its remaining tariffs on nearly all agricultural products by 2020 (2023 for rice

and chicken leg quarters and 2025 for dairy products). For certain products, tariff-rate quotas (TRQs) permit some immediate duty-free access for specified quantities during the tariff phase out period, with the duty-free amount expanding during that period. Guatemala will liberalize trade in white corn through expansion of a TRQ, rather than by tariff reductions.

Nontariff Measures

Under the CAFTA-DR, Guatemala committed to improve transparency and efficiency in administering customs procedures, including the CAFTA-DR rules of origin. Guatemala also committed to ensuring greater procedural certainty and fairness in the administration of these procedures, and all the CAFTA-DR countries must share information to combat illegal transshipment of goods.

U.S. companies have raised concerns that the Guatemalan customs authority has not provided adequate advance notice regarding administrative changes in documentation requirements for imported shipments, such as information needed on certifications of origin. The United States raised this issue with the customs authority and received assurances that future changes will be communicated in advance and will be available on the tax and customs website: <http://portal.sat.gob.gt/sitio/>.

GOVERNMENT PROCUREMENT

In August 2009, the Guatemalan Congress approved reforms to the Government Procurement Law, which simplified bidding procedures, eliminated the fee previously charged to receive bidding documents, and provided an additional opportunity for suppliers to raise objections to the bidding process. Foreign suppliers must submit their bids through locally registered representatives, a process that can place foreign bidders at a competitive disadvantage.

Under the CAFTA-DR, procuring entities must use 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 are permitted to bid on most Guatemalan government procurement, including purchases by government ministries and state-owned enterprises, on the same basis as Guatemalan suppliers. The anticorruption provisions of the Agreement require each government to ensure under its domestic law that bribery in matters affecting trade and investment, including in government procurement, is treated as a criminal offense, or is subject to comparable penalties.

Guatemala is not a signatory to the WTO Agreement on Government Procurement.

EXPORT SUBSIDIES

Under the CAFTA-DR, Guatemala may not adopt new duty waivers or expand existing duty waivers that are conditioned on the fulfillment of a performance requirement (*e.g.*, the export of a given level or percentage of goods). However, under the CAFTA-DR, Guatemala was permitted to maintain such measures through December 31, 2009, provided that it maintained the measures in accordance with its obligations under the WTO Agreement on Subsidies and Countervailing Measures. The U.S. Government is working with the Guatemalan government in an effort to ensure it implements its CAFTA-DR obligation.

Guatemala provides tax exemptions to investors in free trade zones and maintains duty drawback programs aimed mainly at garment manufacturing and assembly operations or “maquiladoras” (firms that are permitted to operate outside a free trade zone and still receive tax and duty benefits). The Law for the Promotion and Development of Export Activities and Drawback provides tax and duty benefits to

companies that import over half of their production inputs/components and export their completed products. Investors in this sector are granted a 10 year exemption from both income taxes and the Solidarity Tax, which is Guatemala's temporary alternative minimum tax. Additionally, companies are granted an exemption from payment of tariffs and value added taxes on imported machinery, and a one year suspension (extendable to a second year) of the same tariffs and taxes on imports of production inputs and packing material. Taxes are waived when the goods are re-exported.

INTELLECTUAL PROPERTY RIGHTS (IPR) PROTECTION

Guatemala was listed on the Watch List in the 2009 Special 301 report. Key concerns cited in the Report included the need to provide higher priority to, and greater resources for, combating piracy and counterfeiting and to enhance enforcement efforts by pursuing raids and prosecutions against not just small scale sellers but also against the manufacturers of pirated and counterfeit goods.

The CAFTA-DR provides for improved standards for the protection and enforcement of a broad range of IPR, including: protections for patents, trademarks, undisclosed test and other data submitted to obtain marketing approval for pharmaceuticals and agricultural chemicals, and for digital copyrighted products such as software, music, text, and videos; and further deterrence of piracy and counterfeiting. To implement its CAFTA-DR IPR obligations, Guatemala undertook legislative reforms providing for stronger IPR protection and enforcement.

The United States will continue to monitor Guatemala's implementation of its IPR obligations under the CAFTA-DR.

SERVICES BARRIERS

Under the CAFTA-DR, Guatemala granted U.S. services suppliers substantial access to its services market, including for financial services.

The Guatemalan Congress is considering an insurance law that would strengthen supervision of the insurance sector and allow foreign insurance companies to open branches in Guatemala. This law would also require foreign insurance companies to fully capitalize in Guatemala.

Guatemala has agreed to ensure reasonable and nondiscriminatory access to essential telecommunications facilities. It also has agreed to ensure that major suppliers provide interconnection at cost oriented rates. Concerns remain over the ability of the Guatemalan telecommunications regulator – the Superintendency of Telecommunications – to do so. The United States continues to work with the Guatemalan government to ensure compliance with its obligations under the CAFTA-DR.

In addition, some other market access issues remain. Public notaries must be Guatemalan nationals. Foreign enterprises may provide licensed professional services in Guatemala only through a contract or other relationship with an enterprise established in Guatemala. Under the CAFTA-DR, U.S. insurance companies may establish wholly owned subsidiaries and joint ventures and will be allowed to establish branches by July 1, 2010.

INVESTMENT BARRIERS

The CAFTA-DR establishes a secure and predictable legal framework for U.S. investors operating in Guatemala. The investment protection obligations of the CAFTA-DR apply to a broad definition of investments, including enterprises, debt, concessions, contracts, and intellectual property. In most circumstances, the CAFTA-DR guarantees U.S. investors the right to establish, acquire, and operate their

investments in Guatemala on an equal footing with domestic investors. Investor rights are protected under the CAFTA-DR by a procedure for dispute settlement that is impartial and transparent.

Notwithstanding the CAFTA-DR's legal framework for investment, some U.S. companies operating in Guatemala have complained that complex and unclear laws and regulations continue to constitute practical barriers to investment.

OTHER BARRIERS

Some U.S. firms and citizens have found corruption in government, including in the judiciary, to be a significant concern and a constraint to successful investment in Guatemala. The general perception is that government agencies and the judicial system are weak and subject to outside influence. Administrative and judicial decision making appear at times to be inconsistent, non-transparent, and very time consuming.