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## **NATIONAL ACTION PLAN FOR TRADE CAPACITY BUILDING IN GUATEMALA**

**A proposal by the Government of Guatemala  
in the framework of the US-CAFTA<sup>1</sup>**

12 December 2002

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<sup>1</sup> This document was prepared by the Ministry of Economics of Guatemala with the assistance of ECLAC.

# NATIONAL ACTION PLAN FOR TRADE CAPACITY BUILDING IN GUATEMALA

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## **Foreword**

The objective of this proposal is to facilitate Guatemala develop its national trade capacity building action plan to support: a) preparation for and participation in the US-Central America Free Trade Agreement (US-CAFTA) negotiations; b) implementation of the agreement; and c) the transition and changes necessary to reap fully the benefits of the US-CAFTA.

The National Action Plan (NAP) document defines, prioritize, and articulate trade-related capacity building needs. It consists of two parts: Part A presents a brief discussion of the national context, providing the current organizational and policy-making structure related to trade issues; Part B includes Guatemala's trade capacity-building assessment, and identifies a prioritized list of capacity needs to form the basis of the country's action plan. At the end of the document an Annex of project profiles is included, containing cooperation proposals in areas or sectors that the Guatemalan government considers have to be addressed in the very short term, so as to improve its preparedness to negotiate the US CAFTA in the best possible means.

This first draft of the NAP document is expected to evolve over time, being revised and updated as appropriate, particularly in light of implementing obligations and structural changes. The Plan thereby will serve as a management tool for mobilizing and managing trade capacity building assistance –both from public and private sources– as well as an integral component of the country's trade development strategy.

Once priorities are identified, the country would determine the level of local counterpart resources (local currency, staffing, and coordination), if any, that the government can provide to complement the donor funding.

The National Action Plan can be seen as a “seed investment” for the attraction of private/public both domestic and international– resources to broaden free trade potential and to promote comprehensive and inclusive development in Guatemala.

## Acronyms

AD/CVD	Antidumping and Countervailing Measures
AMCHAM	American Chamber of Commerce
CACIF	Coordinating Committee of Business Associations
CBI	The Caribbean Basin Initiative
CBTPA	Caribbean Basin Trade Partnership Act
CENCIT	Entrepreneur Commission for International Trade Negotiations
CIEN	National Economic Research Center
COGUANOR	Guatemalan Commission for Standards and Technical Regulations
CONACOEX	National Export Coordination Commission
CONAMA	National Commission for Environment
CONAPEX	National Council for the Promotion of Exports
CONEI	National Commission of International Commercial Negotiations
DETP	Directorate for External Trade Policy
ECLAC	Economic Commission for Latin America and the Caribbean
EEGSA	Empresa Eléctrica de Guatemala
FEGUA	Railway Company of Guatemala
FTA	Free Trade Agreement
FTAA	Free Trade Area of the Americas
GATS	General Agreement on Trade in Services
GATT	General Agreement on Tariffs and Trade
IADB	Inter American Development Bank
IDC	Cooperación de Inversiones y Desarrollo
IICA	Inter-American Institute for Cooperation on Agriculture
ILO	International Labor Organization
IMF	International Monetary Fund
INDE	Instituto Nacional de Electrificación
INGUAT	Guatemalan Institute for Tourism
JICA	Japan International Cooperation Agency
MAGA	Ministry of Agriculture, Livestock and Food
MINECO	Ministry of Economics
MINFIN	Ministry of Finance
MINRE	Ministry of Foreign Affairs
MSPAS	Ministry of Public Health
NAP	National Action Plan
PRONACOM	National Competitiveness Program
SAT	Superintendency of Tax Administration
SEGEPLAN	Secretariat of Planning and Programming for the Presidency
SIAF	Integrated Financial Management System
SIECA	Central American Integration System
SIT	Superintendence of Telecommunications
TELGUA	Empresa de Telecomunicaciones de Guatemala
TRIPS Agreement	Agreement on Trade-Related Aspects of Intellectual Property Rights
UNCITRAL	United Nations Commission on International Trade Law
USAID	United States Agency for International Development
US-CAFTA	Free Trade between the Central American Countries and the United States
USDA	United States Department of Agriculture
VAT	Value Added Tax
WTO	World Trade Organization

## Summary and Conclusions

During the last decade economic policy and structural reform measures in Guatemala have been introduced with a view to the economic modernization of the country, encouraging a greater opening-up of the domestic economy and a better allocation of resources. After a long period of armed conflict, the peace negotiation process culminated with the Accord for a Firm and Lasting Peace, signed in December 1996. Included in this agreement are economic and social goals that have shaped the conduct of economic policy, including the Fiscal Covenant signed in 2000 by the Government and a number of civil organizations.

Economic policy in recent years has promoted greater private sector participation and reduced the role of the State in the economy. In 1996 the government initiated a process of divesting State assets through the sale of majority of the shares of the Empresa Eléctrica de Guatemala (EEGSA) and the Empresa de Telecomunicaciones de Guatemala, S.A. (TELGUA), the telephone-band operating concession, the sale of two distribution companies of the Instituto Nacional de Electrificación (INDE), the usufruct of the railway company of Guatemala (FEGUA), and the administration and operation of the postal services.

Trade policy formulation and implementation is suggested to the President of Guatemala by the National Council for the Promotion of Exports (CONAPEX). This council is integrated by bodies of both the public and the private sector. The Ministry of Economics heads CONAPEX and the private sector is represented by a number of chambers and entrepreneurial associations.

At the public sector level, three ministries account for most arrangements referred to international trade issues: the Ministry of Economics, the Ministry of Agriculture, Livestock and Food, and the Ministry of Foreign Affairs. As for bilateral investment arrangements, the burden lays on the Technical Inter-Institutional Investment Group, coordinated by the Ministry of Foreign Affairs. Another important group is the National Commission of International Commercial Negotiations (CONEI), where most of these institutions get together, headed by the Ministry of Economics, in order to define international commercial negotiations.

The analysis undertaken to determine needs to strengthen capacities related to trade reveals areas of concern for the Guatemalan government that should be addressed immediately; others are estimated to require attention during the negotiation process and some others require assistance in the phase of transition to free trade and a new integration framework.

In a first approach building capacity to negotiate and implement trade agreements requires to recognize strengths and weaknesses at the horizontal, cross-cutting level. The most significant are the following:

1. Experienced and sufficient staff in several ministries and agencies is an important concern. In most of the national entities participating directly or indirectly in trade negotiations it is necessary to increase the hardware and telecommunications equipment for information processing and analysis, establishment of fluid coordination and communication, organization of information for analysis and formulation of policies, as well as preparation of materials of public diffusion.

Another priority is to strengthen the capacity of undertaking investigations about subsidies, antidumping and countervailing measures to sustain policy measures in this field.

2. Institutional capacities are linked to specific responsibilities of each institution or ministry. Beyond the advisory roles of some of these, there is a role in supporting producers, traders, workers, etc. in their adaptation to the new market and competitive conditions. Thus capacities required vary from trade experts, economic analysts, to sectoral promoters and field experts. In other cases, given the regulatory nature of the institutions, specific technical expertise is required. Areas for improvement, beyond the training needs already pointed out, are related to adequate resources, both in terms of sufficient budgetary provisions for the emerging demands and in technical updating, methodologies, support centers for monitoring of inter-institutional aspects, rationalizing administrative procedure, etc.

3. The issue of trade related regulations and disciplines evidences the existence of numerous codes, laws, regulations and the overriding blanket coverage of the constitution. Areas to be analyzed and where convergence and complementarity must be established move from the sectoral (health, agricultural, etc.) to the macroeconomic (banking, monetary, fiscal) to the regional (Central American provisions in aspects like customs union, tariff harmonization, transport regulations, conflict settlement, etc.).

4. Trade education is another horizontal area where actions are needed. There is no national consultation/coordination body to this purpose. The Ministry of Economics, on the one hand, and the private sector (under the CENCIT), on the other, have led this role but the need for a more extensive effort, involving the academic sector, civil society organizations, and the media is pointed out as an area for priority actions.

5. Sources of technical assistance, although numerous and varied are not necessarily focused to the needs of trade negotiations, treaties implementation and the advancement of freer trade. A more coherent and consistent approach is desired and the plan resulting from this exercise could be a means to move in that direction.

In the case of sectoral-thematic issues, in the area of trade negotiation and preparation more than 40 measures are prioritized with the highest mark in the different sectors/themes. This figure is greater than the corresponding to priority 1 measures acknowledged by stakeholders in the stage of implementation, which is an indication of the urgency of receiving assistance in the very short term. Agreement between entrepreneurs, government and civil society is crucial in several areas and sectors, basically on those related to trade liberalization of goods, which is seen as instrumental to the capacity to formulate policy for the negotiation process.

1. Lack of resources and to some extent insufficient information regarding commercial and financial international negotiations, prevents a better coordination between government agencies. This could be improved if better databases were developed and more investment on information and communication technologies was put in place. On the other hand, coordination between public and private agencies as well as interchange of information among them could be improved.

2. Training is a recurrent need in all the fields, under a number of different possible modalities for current staff or the necessary expertise to pursue the negotiating (and later the implementation process) of a free trade agreement. This training reflects a concern to update and overhaul the existing capacities. Experience in bilateral and multilateral negotiations is a must (and the lack of it a drawback) in a number of issues and sectors and is a substantial part of the training programs.

3. Intra governmental and inter institutional coordination, information exchange in an operating system –using the existing CONAPEX framework— are also areas of concern and priority for capacity building regarding the need for resources like upgrading databases, a statistical network system, modern information technology, etc., in order to enable negotiators to attend meetings, improving the trade procedures and formulate trade policies.

4. Reinforcing the regional coordination process is also a concern that is reflected both in the overall free trade process as well as in specific sectors considered as sensitive. For example, the speedy completion of the Central American Customs Union is one of the most emphasized needs.

A number of needs already emerge clearly at the stage of agreement implementation. Seventeen specific measures with top priority are identified at the current stage. Most are linked to training, information systems, software, hardware, communication channels, institutional arrangements, policy formulation and its monitoring and evaluation, mechanisms to ensure compliance and implementation not only of the agreement but of current multilateral, regional and bilateral obligations, and the necessary physical infrastructure to support an increased trade.

1. The question of physical capital is tied to the necessary human capital, both for the competitive production of goods and services tradable in a free trade area environment and the administration, monitoring and managing of this growing activity.

2. At this stage, the need of having a good statistical system and information system between public and private sector trade-related institution is remarkable in order to monitoring trade flows, follow customs procedures and in general, having an appropriate interagency coordination.

3. The recognition that needs are not only of a technical nature but of a financial investment in capacity building is emphasized. This is part of a prevailing strategic conviction that rules facilitating freer trade must be a powerful instrument to attract investment.

## PART A

### ORGANIZATIONAL AND POLICY MAKING STRUCTURE OF TRADE ISSUES

This part includes a description on the current national organizational and policy-making structure for negotiation and implementation of trade agreements. It provides a context in which to make determinations of the needs of the countries. The section also describes the responsibilities of the institutions and agencies that participate in trade policy decisions and implement agreements.

#### I. Economic reform and trade policy environment

Economic performance of Guatemala was strong during most of the nineties, but in recent years growth has been negatively affected by various factors, in particular the external shocks that have led to a deterioration in the terms of trade, the damage caused by hurricane Mitch and the global economic slowdown. Total trade in goods increased at an annual rate of around 10% in the last decade, but the external factors mentioned determined a decline in the growth rate in the last few years; exports grew at an annual rate of 1.5% in 1998-2001, reaching a value of US\$2,978.5 million in 2001, while imports increased at a rate of 4.5%, standing in 2001 at US\$5,300.6 million. Particularly dynamic were the exports of coffee and bananas, to the rest of the world and to Central America. With regard to imports there were considerable increases recorded in consumer goods, capital goods, raw materials, and fuel and lubricants.

In the framework of compromises derived from the peace agreement, the Fiscal Covenant for a Future with Peace and Development was signed in May 2000 by representatives of State institutions and civil organizations. The objectives are to conduct a fiscal reform to increase public sector income and to guarantee a more efficient and transparent execution of its expenditure and financing. The covenant recommends a rate of investment of at least 4% of GDP and suggested fiscal deficit and revenue targets for the following years. In this framework the value added tax (VAT) rate increased from 10% to 12% in 2001.

In the financial area, the Modernization Program for the National Financial System seeks to strengthen the country's financial legislation, so as to improve the competitiveness of the institutions on the one hand and, on the other, protect the interests of depositors, as well as safeguarding the liquidity, solvency and stability of the national financial system as a whole. Several legal reforms have been approved or are in the process of approval that intend to strengthen the financial system and ensure greater supervision, by providing a general legal framework that will bring greater legal certainty and help to make the financial institutions more efficient, solid, transparent and competitive, on the basis of a preventative approach, and thereby contributing to the development of the domestic economy and strengthening public trust in saving and investment.

#### 1. Opening of the economy

The Law on Foreign Investment was devised in 1998 to provide legal certainty for the investor. The objective is to reap benefits for the country, such as new jobs, through the generation of foreign investment, which would become a source of technology transfer and help to promote the

growth and diversification of the country's economy through the production and export of goods and services. The law grants full security and protection for investments and free access, movement and convertibility of foreign currency relating to the initial capital investment transferred abroad either at a later date or on account of the winding up, liquidation or voluntary sale of a foreign investment, or in the case of compensation resulting from appropriation. This involves the creation of a one-stop facility for investments, having responsibility for providing all kinds of technical assistance and facilitating administrative procedures for the investor so that he may establish himself in the country, where applicable, with the confidence that his commercial activities will receive national treatment.

Guatemala has carried out in the last ten years a whole series of privatizations in the main services sectors, including the postal service, telecommunications, air transport, with 70% under foreign ownership, the urban passenger transport service, with a 51 per cent foreign holding, and the granting of concessions to provide loading/unloading and port operation services.

## **2. Market access**

Guatemala's trade legislation is among the most open and currently applies import tariffs of between 0% and 15%, aligned with the other Central American countries. In accordance with its rights and obligations under the WTO, Guatemala applies only those measures necessary to protect human, animal or plant life or health.

The Free Trade Agreement (FTA) with Mexico came into force in March 2001 and was the first instrument of this kind negotiated by Guatemala. In 1998 negotiations were initiated between Central America and Chile for an FTA, which has not yet been finalized. In that same year an FTA was negotiated with the Dominican Republic; it was marked by the negotiation of immediate access between the parties under most of the tariff universe. In 1999 a new generation partial scope agreement was signed between Guatemala and Cuba with a view to increasing trade in complementary areas of the economies. In March 2000 tariff negotiations began for an FTA between Central America and Panama with a view to upgrading a free trade and preferential trade agreement between Guatemala and Panama which only benefited a limited number of goods and which, since it dated from 1975, needed to be revised and upgraded in accordance with the new international legal framework. Guatemala is currently negotiating a free trade treaty with Canada and, at the same time, participates in the construction of the Free Trade Area of the Americas (FTAA).

Guatemala enjoys the benefits of The Caribbean Basin Initiative (CBI), a program of the Government of the United States (US) to promote economic growth through tariff preferences for products originating from Central America and the Caribbean. The Initiative grants total exemption from import tariffs until 2008 on a wide range of goods imported from the countries benefiting from the program, provided that the conditions laid down for the enjoyment of such benefits are fulfilled.

The Caribbean Basin Trade Partnership Act (CBTPA), which came into force on 1 October 2000, granted the countries of the Caribbean Basin beneficial tariff rates and quotas for goods which enter the United States market from those countries, but which are manufactured from raw materials from the United States.

The CBTPA has significantly expanded preferential treatment for articles of clothing made in the Caribbean Basin region. Garments manufactured in this region from cloth made from yarn from the United States are exempt from duties and quotas. The same treatment is accorded to specific knitted garments manufactured in the CBTPA beneficiary countries from cloth made in the Caribbean Basin region, provided that United States yarn has been used in the manufacture of the cloth. The "regional cloth" benefit for knitted garments is subject to an annual global restriction, with separate restrictions from those which apply to certain kinds of T-shirts.

The new benefits for the Caribbean Basin countries also involve new responsibilities. Almost all the new special benefits require the use of American yarn for the manufacture of garments. On the basis of the precedents established by the NAFTA Agreement, special procedures have to be followed with regard to the import and export formalities so as to ensure that the domestic goods fulfill the requirements laid down under the CBTPA.

### **3. Promotion of competitiveness and competition**

The National Competitiveness Program (PRONACOM) is the result of a regional initiative that seeks to create in Central America a platform where productivity, investment and international trade can take place on competitive terms with the most developed regions of the world. Various sectors participate in this program on the basis of joint funding.

Legal and institutional changes are being introduced with regard to consumer protection, competition policy and the National Quality System, including the preparation of three draft laws (Consumer Protection, National Quality System and Promotion of Competition) and the establishment of various institutions.

### **4. Development of exports**

In seeking to open up the economy and thus devise a new export model, conditions are being created for the development of industry. The crucial factor in this process of change has been the participation of a new generation of Guatemalan entrepreneurs having links with foreign investors with experience in the sectors of clothing and textiles, for whom the economic development laws represent an opportunity to take advantage of facilities that promote a diversification of industrial activity.

In order to give an additional impetus to these changes two important decrees have been issued, both in 1989: "Law on the Promotion and Development of Export and In-Bond Processing Activities" and "Law on Free Trade Zones". The application of these decrees has helped to create direct and indirect jobs, attract foreign investment and bring in foreign currency. During the 1990s these new policies helped to diversify and increase exports of non-traditional products such as snow peas, broccoli, raspberries, strawberries, sesame, melons, textiles, wooden furniture, as well as traditional products such as sugar, coffee, bananas, cardamom, rubber, etc.

There are close to 900 enterprises operating under the terms of the Law on the Promotion and Development of Export and In-Bond Processing Activities, mainly in the manufacture of clothes. The application of this Law has led to the establishment of related service and support enterprises, mainly for the provision of air freight and maritime transport services. The advantages granted under this law include the temporary admission of raw materials, semi-

finished products, intermediate products, packing materials, containers, labels, patterns, samples, machinery and equipment, parts, components and accessories; exemption from import taxes, customs duties and value added tax on the import of machinery and equipment, parts, components and accessories; exemption from income tax for ten years; and exemption from ordinary and extraordinary export taxes.

There are currently 13 free trade zones in operation and eight more are being developed. Of these free trade zones only one is administered by the State. The benefits for the entity administering the free-trade zone include exemption from taxes, customs duties and charges that apply to the import of machinery, equipment, tools and material intended for the construction of the infrastructure and installations; exemption from income tax for ten years; and exemption from taxes, customs duties and other charges that apply to the import and consumption of fuel oil, bunker oil and butane gas and propane for the generation of electrical power.

The benefits for the users of the free-trade zones include exemption from taxes, customs duties and charges that apply to the import of machinery, equipment, tools, raw materials and other materials used in the production of goods or the supply of services; exemption from taxes, customs duties and charges that apply to the import of goods or components that are stored in the free-trade zone prior to their marketing; exemption from income tax for ten years for industrial and service users and for five years for commercial users; and exemption from value added tax on the transfer of goods from within and between free-trade zones. These measures will have to be modified to put Guatemala in line with WTO provisions by 2007.

Efforts to modernize and strengthen the executive branch have resulted in a series of measures to adapt the laws, policies, institutions and ways of supplying services as well as its management systems. This process of modernization and institutional consolidation has involved the establishment of various institutions needed to enable the State to respond to constant change. They include the Tax Administration Office, which is responsible for the collection, administration, supervision and control of domestic taxes and import duties, and the Telecommunications Authority, a technical body which administers and supervises the use of the radio spectrum and the telecommunications register. In addition, the Ministry of the Economy has been restructured (see below) so as to enable it to ensure Guatemala's effective participation in the multilateral trading system, as well as in regional and bilateral agreements.

## **II. Recent trade policy developments**

In the recent past Guatemala has made significant progress in the degree of trade liberalization, the promotion and diversification of exports and in conducting international negotiations. There have also been important advances in the reactivation of the Central American Common Market and the application of the world trade rules established by the WTO. The Central American Presidents recognize the need to give new impetus to the process of Central American economic integration and basing their action on the principles of the General Treaty on Central American Economic Integration, signed on 29 October 1993, that "the States' parties undertake to establish a customs union between their territories for the purpose of giving free transit to goods independently of their origin, following customs clearance, in any of the Member States, of the products from third countries.

## **1. Multilateral trading system**

Guatemala acceded to the General Agreement on Tariffs and Trade (GATT) on 10 October 1991 when the Uruguay Round was already in the process of being negotiated. This important step for Guatemala marked a new era of trade liberalization and export promotion.

During the negotiation of the Uruguay Round Guatemala recognized the need for an international legally binding system that would regulate trade between countries, bringing certainty and transparency in the application of their domestic laws, as well as the need for greater openness of protected and captive markets so as to promote the exports of traditional and non-traditional products. This was particularly important in the agricultural sector which represents one of the country's main economic activities, since it contributes 23% to GDP and employs 39% per cent of the working population. The agricultural sector represents about 60% of Guatemala's exports, which are concentrated on traditional products such as coffee, sugar, bananas and cardamom.

The negotiations of the Uruguay Round gave Guatemala an opportunity to improve the conditions of access for its products and to ensure regulated trade and legal certainty, while enhancing the possibility of expanding its exports to new markets, especially non-traditional products.

Guatemala's objective in joining the World Trade Organization was to benefit from a more disciplined trade system, including the establishment of tariff ceilings, the reduction and regulation of subsidies, the tariffication of non-tariff barriers in agriculture and a framework for international trade that would provide a basis for improving the current terms of agricultural trade.

In response to the commitments deriving from the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS Agreement), the Ministry of the Economy introduced the Industrial Property Law, which was approved on 1 November 2000 under Decree No. 57-2000. This law provides protection for intellectual property rights similar to that existing in other countries, so that individuals and enterprises in Guatemala may enjoy legal remedies comparable to those available to their competitors in other countries with more advanced legislation and thus be able to prevent the copying or imitation of their products, manufacturing processes, trademarks, tradenames, etc.

## **2. Regional Integration and trade agreements**

Central American integration received new momentum after the signing of the Framework Agreement for the Establishment of a customs union between El Salvador and Guatemala, on 13 January 2000. The two countries have achieved substantial progress regard to tariffs, customs harmonization, sanitary registers and tax harmonization. Work on these issues has continued between El Salvador, Guatemala, Honduras and Nicaragua and on August 2000 the Governments of Nicaragua and Honduras expressed their decision to formally join the customs union course. In June 2002 Costa Rica announced their will to join the process so that the whole region can become a single customs area, before proceeding towards the creation of an economic union.

In the Declaration of the Presidents of the Summit of the Americas held in Miami in 1994 the countries undertook to construct a free-trade area, the negotiations of which would be concluded

in 2005. Guatemala has participated actively in the negotiating groups established by the Hemisphere's ministers of trade so as to ensure adequate treatment, as a country with a relatively lower level of economic development, in respect of the subjects currently being negotiated.

Mexico. The trade agreement signed by Guatemala, Honduras and El Salvador with Mexico came into force on 15 March 2001 and was the first instrument of this kind signed by Guatemala. It is expected that this agreement will enable Guatemalan industry, agriculture and business to export more goods to Mexico at lower tariff rates than at present. In addition, it will encourage foreign investment in Guatemala for the purpose of exporting to the Mexican market.

Dominican Republic. The FTA between Guatemala, Honduras, El Salvador, Nicaragua and Costa Rica, and the Dominican Republic came into force on 15 October 2001. The more important objectives are: to stimulate the expansion and diversification of the trade in goods and services between the parties; to promote conditions of free competition within the free-trade area, through the reciprocal elimination of trade barriers to goods and services originating in the parties' territories; to promote and protect investment directed to making intensive use of the advantages that are offered by the parties' markets; and to establish effective procedures for the application and implementation of this agreement as regards its joint administration and the settlement of disputes.

Panama. The purpose of negotiating this free-trade agreement is to create an instrument to update the existing bilateral preferential agreements on trade liberalization and include access to trade in services and investment opportunities. The normative part was signed on 16 May 2001 in Panama City and the annexes, which include the schedules of tariff reductions and the services sector reservations, are expected to be negotiated shortly.

Canada. Trade with Canada is at a relatively low level. However, given the respective productive structures, it would appear that the two markets are complementary and not direct competitors, so that there is considerable potential for trade, and consequently negotiations for a free-trade agreement will be pursued jointly with El Salvador, Honduras and Nicaragua.

Chile. The Central American countries started negotiations to sign a free trade agreement with Chile on August 1998 at a meeting of deputy foreign ministers of the countries. On October 1999, in Guatemala City, the Presidents of Costa Rica, El Salvador, Honduras, Guatemala, Nicaragua and Chile signed the definitive text of the Free-trade Agreement between Chile and Central America. To date, the annexes are still awaiting negotiation.

US-CAFTA. After the approval of the Trade Promotion Authority granted by the US Congress to the President, talks between the US and the Central American countries started with the objective of reaching a free trade agreement. The government of Guatemala has just named a chief negotiator to conduct the country's strategy. The private sector will participate, as it does in FTAA, through CENCIT, the Entrepreneur Commission for International Trade Negotiations (see below).

Cuba. The Partial Scope Agreement between Guatemala and Cuba was signed in Havana on 29 January 1999 and came into force on 18 May 2001. Its objective is to grant tariff preferences and eliminate non-tariff restrictions so as to facilitate, expand, diversify and promote trade

between Guatemala and Cuba, as well as to adopt measures and pursue actions so as to stimulate the process of Latin American integration.

Venezuela and Colombia. In 1984 and 1985 Guatemala signed Partial Scope Agreements with Colombia and Venezuela. Steps have been taken in recent months to renegotiate these agreements with a view to increasing trade.

### **3. Investment promotion agreements**

As part of its policy to protect foreign investment through agreements for the promotion and reciprocal protection of such investment, Guatemala grants substantial guarantees, including guarantees of due legal process on the reception of such investment, as well as protection and stability for the investor. Agreements of this kind have been negotiated and approved in recent years with Argentina, Chile, Chinese Taipei, Cuba, France, Korea and the Netherlands. Other agreements are currently going through the legislative process for approval or are being negotiated.

### **4. Unilateral liberalization measures**

From 1986 onwards a process of trade liberalization was initiated through the elimination of 95% of non-tariff restrictions, such as quotas and export licenses, and the reduction of tariff levels from an average of 60% to the current 7.38%, with a ceiling of 15% and a floor of 0% as of 1996. This liberalization substantially reduced the anti-export bias resulting from tariffs on imported inputs.

## **III. Institutional framework for trade policy decisions and implementation of agreements.**

### **1. Design and implementation of trade policy**

The increasing importance of international trade and economic relations and the intensification of trade agreements during the nineties made it necessary to create a new institutional structure within the Ministry of Economics in 1997. Hence it was divided into three vice-ministries: Integration and External Trade; Investment and Competition; and Micro, Small and Medium-sized enterprises. This structure was put into practice in 2002 following Government Agreement Number 182-2000.

The National Council for the Promotion of Exports (CONAPEX), was created in 1986 with the aim of advising the President of Guatemala on the national foreign trade policy and to ensure its instrumentation and execution, as well as to propose and execute the national policy to enhance and diversify exports. CONAPEX includes representatives from both the public and private sectors. The Ministry of Economics leads CONAPEX and the other Government agencies taking part are the Ministries of Finance; Agriculture, Livestock and Food, Communications, Transport and Public Infrastructure, and the Central Bank. Cámara Empresarial de Guatemala appoints the private sector representatives from the agriculture, industry, finance, tourism, retail and cooperatives sectors.

The Ministry of the Economy, through the Vice-Ministry for Integration and External Trade is the responsible entity for the formulation and coordination of trade policy and the conducting of negotiations of economic international agreements and its subsequent administration.

The Vice-Ministry includes three Directorates: External trade policy, Administration of external trade and Economic analysis. It employs more than 70 people and its approved budget for 2000 was Q13.3 million, around (US\$1.8 million).

The Directorate for External Trade Policy is responsible for international economic negotiations, including both protection agreements and investment promotion. The DETP designs, formulates and executes the negotiating strategy in consultation with the relevant governmental entities. It also acts as the counterpart of the Guatemala's permanent mission before the WTO and supports the Vice ministry in the design and negotiation of FTA's, in the process of Central American integration and in the enhancement of exports.

The Directorate for the Administration of Foreign Trade is the responsible entity for the implementation and follow-up of the international agreements signed by Guatemala. The punctual execution of specific areas of the agreements corresponds to other relevant government institutions, which requires efficient coordination, dissemination of information with those specialized agencies.

The Directorate of Economic Analysis is new in the structure of the Vice ministry and its function is to analyze economic, social, and political information and issues to support decision at the Ministry level.

There are trade bureaus in several countries which promote exports, investment and tourism and follow-up the trade policies of such countries. The bureaus are coordinated by CONAPEX and there are four in the US, one in Mexico and one in Germany.

## **2. Conduct of international economic agreements**

The Ministry of Foreign Relations is responsible before Congress for the conduct of international agreements in general and the economic ones in particular. The Ministry of the Economy collaborates in this procedure by presenting to Congress all necessary information for international negotiations and explaining the contents and scope of the agreements.

## **3. Other matters related to trade and development policies**

Human capital is key to impel the development of the country. Governmental driving in this matter has been oriented to observe the accomplishment of labor laws, to promote dialogue and consensus between employers and employees and to design global policies of qualification and professional formation. The Ministry of Labor is the agency responsible for employment policy, promotion, and training; furthermore, it promotes and harmonizes the labor relations and guards for the fulfillment of labor laws and social prevention.

Rights and obligations of employers and employees are governed by the Labor Code. In 2001 reforms were introduced to strengthen the competence of the Ministry of Labor to impose economic penalties in cases of violations to the labor law.

The department of Labor Statistics generates the labor statistics; coordinates and responds the requests of labor statistics by the International Labor Organization, evaluates the statistics that take place in the dependencies and decentralized organizations of the Ministry, among others. Guatemala's employment statistics provide information only on employment in the formal sector.

Guatemala has ratified different agreements with the ILO, such as job management, rest and vacations, employment and human resources, special category of workers, working hours, equality of opportunities and treatment, free union, plantations, prohibition of force work, security and hygiene at work, social security, women's work, children's work, migrant workers, indigenous workers and revision of agreements.

Government procurement is regulated by the Government Contracts Law (Decree 57-92) of 21 October 1992 and its regulations, which apply to all state organizations, including decentralized and independent entities, municipalities, and state-owned public companies. Each public-sector entity carries out its own planning and makes purchases based on such planning and financial availability. This law establishes five different applicable contracting procedures, which are: 1) public bidding, 2) private bidding, 3) open contract, 4) direct acquisition, and 5) public auctioning of state-owned goods and enterprises (divestiture procedures).

In the case of the open contract modality, the invitation to tender is published in both the *Official Gazette* and a newspaper of major circulation, in order to guarantee its transparency, and the time-limit for the presentation of offers is twenty days. Bidding is open to the public and attended by one observer designated by all of the companies, one from the Chamber of Industry and one from the Chamber of Commerce who, once the contract has been awarded, issue a report guaranteeing or otherwise the transparency of the process. All information related to such contracts is posted on the Directorate's Web site.

A Bidding Committee is established for each procurement under the public tender and quotation regimes, this is the only competent institution to receive and qualify offers and to adjudicate. Decisions are taken by the Committee on the basis of quality, price, time, and other characteristics as provided in the tender documents.

The Regulations for the Government Contracts Law (Governmental Decisions 1056-92 and 487-94) establish a Register of Suppliers with rules for inscription and payment of value-added tax. The Law and the Regulations do not contain any nationality or residency requirements for registration.

The Regulatory Directorate for Government Procurement, created by the Governmental Decision 476-8000 of October 2000, is the entity responsible for government procurement. Although, government procurement is decentralized, the open contract system is centralized at the Regulatory Directorate, which is responsible for awarding such contracts, nevertheless it is the executive units which inform suppliers awarded contracts under this systems of procurement requirements.

The Guatemalan Government is currently striving to guarantee the transparency of its procurement processes. For example, the Regulatory Directorate for Government Procurement, in

conjunction with consultants from the Financial Management Program of the Integrated Financial Management System (SIAF), is reviewing a new model Government Procurement Act based on the United Nations Commission on International Trade Law (UNCITRAL).

This Directorate, with the backing of the Ministry of Public Finance, the Inter-American Development Bank (IDB) and the World Bank, is promoting a Government Procurement Dissemination Program which publishes all information related to procurement on a web site. Guatemala is not party to the WTO plurilateral Agreement on Government Procurement and has not considered either acceding or requesting status as an observer to this Agreement.

As regards to Environmental Policies legislation is not well structured as a system, and lacks organizational and hierarchical coherence. There are international treaties that were signed but are not fully observed. Some institutions lack adequate legal structure and capacities related to monitoring.

From 1986 companies are required to present an Environmental Impact study to the National Commission for the Environment (CONAMA) for their new projects. The compliance with this rule depends on the institutional capacities of government agencies to enforce it. The public sector has engaged in dialogue with the industrial sector and arrived to some agreements.

In January 2001 the Ministry of Environment and Natural Resources was created, centralizing other previous offices like CONAMA and The Secretary of Environment and Natural Resources. This is now the agency responsible for environmental policy, as well as law enforcement. It presented the National Strategic Environmental Agenda 2000-2004.

#### **4. The role of the private sector**

The private sector participate through CONAPEX and CENCIT in the trade policy design and negotiations. CENCIT is the Entrepreneurship Commission for International Trade Negotiations. This is a multisectorial organization of the private sector of Guatemala created in 1994, in which a number of entrepreneurs associations and organizations participate, namely the Federation of the Small and Medium Sized Firms, the Chambers of Finance, Industry, Agriculture, Commerce, Construction and Tourism, Professional colleges, the National Coordinator of Transport and the Non-Traditional Exporters' Association.

The CENCIT takes responsibility for the analysis, consultation, and information about the relevant topics for trade negotiations. Besides, it formulates proposals and strategies at the sectoral, national, and regional levels to reach agreements in the negotiations. CENCIT puts forward its entrepreneurial vision before the government and civil society to have an effect on the processes of negotiations.

In the particular case of the US-CAFTA negotiations, CENCIT considers that it would be necessary to address the following areas for Guatemala to have a satisfactory agreement: strengthening of inter-sectoral relations; negotiating skills of business sector; dissemination of impact of the agreement; strengthening of consensus building among Central American countries; and strengthening of the national negotiating team.

## **PART B**

### **TRADE CAPACITY-BUILDING ASSESSMENT AND NEEDS**

This Part is divided into three broad areas, related to the stages of the US-CAFTA process: Trade Negotiation Preparation and Participation; Trade Agreement Implementation, and Transition to Free Trade, which comprises macroeconomic and sectoral changes, including structural changes, relating to the US-CAFTA.

The purpose of this section is to identify trade related cooperation needs for each of these three stages of the US-CAFTA process. Cooperation and technical assistance for each of the three areas might be forthcoming before or during the execution of each one of them. Thus, to solve a particular need, *e.g.* during the implementation stage, might request immediate assistance. In part B of this document identified cooperation needs are structured and prioritized to facilitate its use as an input for the undertaking of possible cooperation projects.

The method followed to complete this part basically consisted of interviews with relevant government officials and public sector representatives –individuals, organizations, associations, and consultants– and also the examination of a variety of documents and reports, both from the Government and from international and domestic non-governmental sources.

Interviews took place in Guatemala (21-23 October) and were conducted jointly by Government officials (MINECO) and the ECLAC team. AID and SIECA staff participated in most of the interviews and their contribution to the discussion was very valuable.

#### **I. Cross Cutting Capacity Needs**

The increasing importance of international trade for Guatemala poses challenges to the country at the international economy context, which is characterized by global and competitive markets and by a fast process of trade agreements negotiations, which also demand a sophisticated technical capacity to administer complex trade disciplines. In order to face these challenges, Guatemala needs to train its human resources and strengthen the institutional base on which these activities of international trade are managed.

In order to build the capacity in Guatemala to negotiate and implement trade agreements and follow a coherent trade liberalization strategy it is important to recognize the strengths and weaknesses in terms of some horizontal issues. These were evaluated through the interviews and the following panorama appears.

1. In terms of experienced personnel and sufficient staff, the ministries and agencies involved in trade negotiations normally have limited human resources devoted to these issues, indicating that the pressing and growing needs derived from the negotiating /implementing agenda will not only stretch their capacity to its limits but evidence gaps that will have to be filled. Expertise of the individuals is adequate, some have masters degrees and have been

exposed to internationally recognize courses and training (such as the WTO). Their permanence in the relevant institutions varies from two, five, ten and up to 18 years –in the technical, mid-echelon levels— while mobility and turnover at the executive, politically appointed levels is extremely high. That entails that although institutional capacity and relevant historical and institutional knowledge is there, the heads of department and political appointees do not necessarily share this experience.

2. As an illustration of the above it is necessary to have additional human resources and further training to develop critical activities in the Vice-Ministry of Integration and External Trade of the Ministry of Economics. The actual human resources find it difficult to take ahead parallel processes of negotiation and prepare the technical bases to sustain them. Second, it is advisable to increase the hardware and telecommunications equipment for information processing and analysis, establishment of fluid coordination and communication, organization of information for analysis and formulation of policies, as well as preparation of materials of public diffusion. Informative materials about trade should be more abundant, as well as the communication and diffusion capacity through integrated systems of Intranet, Internet and Web Pages, as its demand grows with new trade commitments. Third, the new structure will have the responsibility to submit the negotiated agreements, and therefore the application of the rights and obligations assumed, in such diverse fora as WTO, Central American Integration, bilateral agreements, and others. One of the priorities is to strengthen the capacity of undertaking investigations about subsidies, antidumping and countervailing measures and give relevant recommendations to the Minister of Economics.

3. The policy making process and their impact on both the negotiation and implementation of trade agreement varies among institutions. It is clearly established that the main responsibility lies with the Ministry of Economics (MINECO), the others having more an advisory or certifying status. Their participation in the negotiation process is somewhat limited while their role in implementation and interpretation of the agreements is more relevant. Areas for improvement are perceived in terms of either participation, consultation or follow-up during the negotiation process and having access to adequate training and information on the issues under consideration.

4. Institutional capacities are also linked to the specific responsibilities of each institution or ministry. Beyond the advisory roles in some, such as the Ministry of Agriculture, Livestock and Food, there is a role in supporting the economic actors (producers, traders, workers, etc.) in their adaptation to the changed market and competitive conditions. Thus capacities required vary from trade experts, economic analysts, to sectoral promoters and field experts. In other cases, given the regulatory nature of the institution, specific technical expertise is required. In most cases one of the identified needs is training to improve technical capacities and updating on methodologies and technologies given the changing scenario that a freer trade require.

5. Given the inter-institutional nature of most of the work required, most institutions recognized their specialized or partial roles in an overall, cross-cutting exercise, both at the negotiation and implementation phase. The existence of inter-agency and inter-ministerial coordination mechanisms is acknowledged, although its operation has been somewhat ad hoc, limited or modified for the specific negotiations. In the implementation of existing agreements

the operation of these mechanisms and inter-agency teams has not been really tested, except in the phase of specific issues or problems to be resolved. In Part A of this document the responsibilities of the CONAPEX, CONACOEX and the Vice ministry for Integration and External Trade are explained in some detail.

6. The number of institutions with competence in each area and in the overall aspects of trade is large and the boundaries of responsibility are not necessarily fully outlined. Overlapping and gaps are a recognized problem.

7. Areas for improvement, beyond the training needs already pointed out, are related to adequate resources –both in terms of sufficient budgetary provisions for the emerging demands, and in technical updating, methodologies to be applied, support centers for monitoring of inter-institutional aspects, rationalizing administrative procedure, etc.

8. The issue of trade related regulations and disciplines as a cross cutting issue evidences the existence of numerous codes, laws, regulations and the overriding blanket coverage of the constitution. Lack of harmonization among these leads to overlapping and gaps that have to be corrected. The trade liberalization process and, more precisely, the signing and implementing of FTA's point to the need for updating, rationalizing and reinforcement of many of the existing legal frameworks. Areas to be analyzed and where convergence and complementarity could be established move from the sectoral (health, agricultural, etc.) to the macroeconomic (banking, monetary, fiscal) to the regional (Central American provisions in aspects like customs union, tariff harmonization, transport regulations, conflict settlement, etc.).

9. Consultation, due process, transparency in the application of all these regulations is being advanced both at the national and regional level, although room for improvement is certainly there in order to have a better business facilitation, improved investment climate, and certainty for business undertakings. The consultation processes with the private sector and civil society are an area of particular relevance for improvement.

10. Information technology as a cross cutting issue is one where most national institutions feel the need for improvement. Special aspects include registry and inspection, information flows, control mechanisms, software and tools to manage information, statistical databases and adequately trained staff are emphasized. Assessment of databases evidences information gaps, lack of updating of information, different criteria applied and, sometimes, contradictory or not compatible data. National statistical capabilities are improving but improvement is necessary. Lack of sufficient material resources (hardware, software, personnel, training, etc.) and appropriate allocation of authority, responsibility and means to handle and process of information are some of the relevant issues. There a number of different agencies involved in the process and compatibility and harmonization of their work is an area that has been signaled out as one where capacity building is essential.

11. Trade education is another horizontal area where actions are needed. There is no national consultation / coordination body to this purpose. The Ministry of Economics, on the one hand, and the private sector (under the CENCIT), on the other, have led this role but the need for a more extensive effort, involving the academic sector, civil society organizations, and the media is an area for priority actions.

12. A related aspect to the previous point is the publication and transparency of laws and regulation. Although most laws and regulations are published in the official Central American gazette, their dissemination and training associated to their implementation is certainly an area that deserves attention and resources. This also implies that the opportunity for stakeholders to comment on these regulations –both as drafts prior to their approval and once adopted for their implementation— is limited. These holds true not only for the private sector and civil society but, within the governmental structure, some limitations exist as to inter-institutional discussion of provisions to be approved or implemented.

13. Sources of technical assistance, although numerous and varied are not necessarily focused to the needs of trade negotiations, treaties implementation and the advancement of freer trade. A more coherent and consistent approach is desired and the plan resulting from this exercise could be a means to move in that direction.

## **II. Preparation for and Participation in Trade Negotiations**

In this section elements for the formulation of a national action plan to build capacity in Guatemala in the stages of preparation/negotiating process are identified, according to the different views of relevant stakeholders involved directly and indirectly in trade negotiating processes.

Results are summarized in what follows from different perspectives. First, trade related capacity needs identified by the relevant stakeholders are ordered by sector/issue in the phase of preparation for negotiation and participation. Second, capacity needs are again ordered by sector or negotiating area, but during the stage of implementation of the compromises of the agreement. Charts 1, 2 and 3 of the Annex summarize these findings. This charts show the trade issues for which assistance is requested –both before and during implementation— ordered accordingly to the number of times that each issue was mentioned as priority 1, 2 or 3 respectively. Thus chart 1 shows the needs/issues stated as priority 1 by stakeholders, ordered by the number of times mentioned by them. Charts 2 and 3 include the same evidence for priorities 2 and 3 respectively.

Graphs 4-16 of the Annex correspond each to the results by sector/topic of assistance. In this charts account is made of the issues pointed out by stakeholders and are ordered by the number of times they appear as priority 1, 2 and 3. Thus each of charts 4-16 summarizes needs by sector/theme, again both during preparation/participation and implementation.

### **Trade related capacity-building needs for trade negotiation preparation and participation by sector/topic and priority.**

1. For the negotiation of market access, or the trade liberalization of goods it is a main concern to promote a dialogue and agreement (consensus building) among entrepreneurs, government and civil society regarding the sensitive points of the negotiation, the rhythm acceptable for the liberalization and deregulation process and the establishment of the exception lists. Coordination with the rest of Central American countries is also considered an area where

actions are needed to reinforce collective negotiating capacity. There is also a recognition that institutional capacity of trade-related bodies has to be strengthened to attain the necessary consensus (both national and regional). An additional aspect is the need to build consciousness in the general public on the objectives, potential results and consequences of a free trade area with the United States.

2. In agricultural products tariff and non tariff measures, monitoring for trade flows and the upgrading of intra-government coordination are needs emphasized by the sectoral institutions both at the national level (Ministry of Agriculture) and regional one (IICA). Transparency in the application of these measures is also a priority. Enabling negotiators to attend meetings is also an important concern alongside upgrading the databases and having a good statistical network system to monitor domestic production. Another relevant issue is the knowledge of how the USDA plays a role in the trade liberalization process. Visits to the United States to have a first hand knowledge of agricultural produce trade procedures should be a necessary step that must be pursued.

3. On non-agricultural products' tariff and non-tariff measures training to increase experience in bilateral and multilateral negotiations as well the improvement of customs facilities have great priority, together with the issues of coordination both within the government and consultation with the private sector and civil society. A related need—less crucial in terms of needs perceived—is the monitoring of trade flows and improving certification and existing information systems.

4. In competition policy capacity needs are assigned to experience in negotiations, and knowledge of commercial competition as well as the need for technical cooperation and staff training. The conducting of marketing studies, the adoption of a competition law (its rules are pending discussion in Congress) and other legal instruments have priority on the basis of knowledge of current laws and regulations in the area and the exchange of experiences.

5. On customs procedures (for non agricultural goods) emphasis is placed on the speedy completion of the Central American customs union through improved intra-government and inter-agency coordination and consultation with private sector and civil society, and consistency over time on rules applied—including certification processes—to avoid cumbersome and unreliable ones. The use of modern communication technologies applied to procedures is also given importance.

6. On dispute settlement staff experience has high priority, particularly in the context of the functioning of panels, dispute settlement measures and existing provisions. The knowledge of international norms and practices has also great importance and second priority is allocated to technical information and documentation.

7. On issues related to environment and trade the questions of coordination (intra-government or intra-agency) and the knowledge of the relationships between trade, investment and environmental have top priority. Transparency on the requirements and due notification of procedures have second level priority.

8. In respect of government procurement highest priority is assigned to the experience in negotiations alongside adequate coordination within the government and among agencies. The need for relevant information systems and the adjustment of existing regulations and the control of trade flows in government purchases follow are the next priorities.

9. On the question of intellectual property rights appropriately trained staff on negotiations as well as on the use of appropriate equipments and software systems to administer and monitor these rights have the highest significance. This includes both the upgrading of existing offices and establishing the necessary agencies to enable the enforcement of laws and regulations. Appropriate inter-agency coordination and consultation with the private sector and civil society are instrumental to the capability to formulate policy and the availability of statistics through appropriate databases and the handling of technical information are given level 3 priority, alongside access to state of the art literature.

10. On investment issues, policy formulation capability alongside the negotiation of investment agreements has top priority. Improving national statistical capability, access to technical information literature and inter-agency coordination have varying relevance according to different institutions.

11. On labor-related aspects maximum relevance is given to interagency and intra-governmental coordination as well as staff's experience and having relevant participation in international bodies. Knowledge of the regulatory process and its impact on trade and investment have also priority. The Ministry of Labor ascertains the need to strengthening the social dialogue and the institution mainly through training programs for union employers, employees and civil employees.

12. On the question of rules of origin the appropriate intergovernmental coordination for their implementation has paramount importance. Following this overriding need come appropriate certification capabilities, upgrading physical infrastructure, including customs offices and installations and, lastly, appropriate information systems.

13. In respect of the use and administration of safeguards, the updating of capacities of personnel as well as the improved implementation procedures attain top priority, followed by the need to build appropriate intergovernmental coordination. Also importance is given to the control of trade movement of safeguard-affected goods and the adjustment of regulatory procedures.

14. For services the main need is related to developing appropriate privatization and regulation procedures on basic services such as electrical facilities, ports, and transportation (road, air, railroad), as well as on the distribution of energy. Equal importance is given to the analysis of the application and control for existing laws. Appropriate regulatory bodies and a review and/or updating of the legal framework (e.g. telecommunications) are a necessary step to negotiate and speed up the needed investments in these services. Related to this is the need to improve the information and statistics and databases. The improvement in regulations and legal framework for financial, telecommunications and insurance services has also some priority.

15. Priority sectors for investment are roads, railroads, ports and airports, alongside the exploration for oil and gas and the processing and refining of these.

16. Standards is an area where capacity building is related to putting in place inter-institutional organizations to exchange information and monitor implementation. Alongside the needs for consultation mechanisms and the training of personnel, the aspect of an information reference system in order to know technical norms, rules and processes for the application of standards is highlighted. The issue of assessing the existing regulatory organizations is relevant to avoid creating unnecessary commercial barriers. The compulsory publication and notification of standards to ensure transparency has also some consideration.

17. On capacity building for negotiation of subsidies, antidumping and countervailing measures top priority goes to acquiring relevant experience on negotiations alongside ensuring intra-government coordination. The establishment of an office responsible for anti-dumping/countervailing duties is also highly relevant. Issues of coordination of private and public sector and the use of appropriate modern information technology for control and monitoring of trading practices is also relevant, and this is linked to having the relevant statistical information.

18. Finally, in sanitary and phytosanitary measures the following assistance priorities are identified: Establishment of Enquiry Point, Experience in bilateral and/ or multilateral negotiations, Identification of Relevant International Fora and strategic interests, and experience in participation therein; Mechanism(s) to ensure domestic implementation of the WTO obligations; Training and assistance in regulations and sanitary and phyto-sanitary norms;

Summarizing, in the area of trade negotiation and preparation, several dozens of measures are prioritized with the highest mark in the different sectors. Agreement between entrepreneurs, government and civil society regarding points to negotiate is repeatedly seen as crucial in several areas and sectors. The analysis and knowledge of current application of existing laws, practices, institutional arrangements is also a recurrent need as well as training under a number of different possible modalities for current staff or the necessary expertise to pursue the negotiating (and later the implementation process) of a free trade agreement. This training reflects a concern to update and overhaul the existing capacities.

Experience in bilateral and multilateral negotiations is seen as a must (and the lack of it a drawback) in a number of issues and sectors. Intra governmental and inter institutional coordination, information exchange in an operating system —using the existing CONAPEX framework— are also an area of concern and priority for capacity building. The matter of reinforcing the regional coordination process is also a generalized concern that is reflected both in the overall process as well as in specific sectors considered as sensitive.

### **III. Trade agreement implementation**

Similar to section II above, in this section a description of needs in the implementation phase identified in a variety of sectors and topics is presented, indicating also the degree of priority proposed by stakeholders

At this stage –the beginning of the negotiation of a free trade agreement with the US– the number of specific capacity building measures for the implementation stage is necessarily less concrete than for the negotiation process itself. In spite of this, a number of needs already emerge clearly. A number of specific measures are identified at the current stage. Most are linked to personnel training in negotiation aspects and in specific sectors or themes, information systems, software, hardware, communication channels, institutional arrangements, policy formulation and its monitoring and evaluation, mechanisms to ensure compliance and implementation not only of the agreement but of current multilateral, regional and bilateral obligations, and the necessary physical infrastructure to support an increased trade.

The question of physical capital is tied to the necessary human capital, both for the competitive production of goods and services tradable in a free trade area environment and for the administration, monitoring and managing of free trade agreements. The recognition that needs are not only of a technical nature but of a financial investment in capacity building are emphasized by all stakeholders. This is part of a prevailing strategic conviction that rules facilitating freer trade must be a powerful instrument to attract investment.

### **Trade related capacity-building needs for the implementation stage by sector/topic and priority.**

1. In negotiation of market access -or the trade liberalization of goods- during the implementation stage top priority is specified for the upgrading intra-government coordination to administer safeguards regime. The issues of market intelligence, analysis of foreign agricultural trade flows, training in trade operation issues such as marketing, entrepreneurial capacity, sustainability of production systems of medium and small producers are also relevant areas for capacity-building. The monitoring of trade flows and the creation of information systems, particularly for agricultural producers to face emerging situations, are also a priority.
2. In competition policy the chief need is to develop appropriate legal frameworks to regulate anticompetitive practices, particularly in the area of telecommunications.
3. On customs procedures a number of operational aspects are relevant to obtain better and faster cross-border trade operations, starting by the speedy operationalizing of the Central American Customs Union, avoiding changing the rules about quality, quantity and certification as well as tariffs applied to traders. Good information systems on customs procedures and the coordination between public and private sector trade-related institutions is essential, as well as improved physical infrastructure. Aspects related to personnel qualification and post-import control, verification of origin certification procedures and the application of the WTO valuation agreement have also relevance. On agricultural products the questions of transparency and appropriate physical facilities for inspection, diagnosis (including laboratories, quarantine equipment, cooling chambers, incinerators, etc.) are also areas for improvement.
3. In the implementation of dispute settlement the experience and improved knowledge on procedures, panels, appellate bodies, procedures, information and training on jurisdiction issues, arbitration emerge as crucial. To generate knowledge about alternative dispute settlement mechanisms is also an area for capacity-building.

4. For the implementation on agreed environmental issues, improved intra-government coordination, transparency on requirements and notification procedures alongside experienced staff for dispute settlement are paramount requirements. Coordination and consultation with private sector and civil society have equal importance to a framework where trade and investment relate to the regulatory aspects of environmental measures.
5. For government procurement interagency coordination and consultation with the private sector and civil society (transparency and accountability of purchasing procedures) are issues to addressed.
6. For the implementation of intellectual property rights provisions top priority corresponds to appropriate policy formulation and the design, equipment, staffing and administering of the implementing agencies. In addition to this inter-agency coordination and consultation with the private sector and civil society are relevant, as well as the analysis of current enforcement of laws and regulations on the protection of intellectual property rights.
7. Similarly, on the question of investment measures' implementation overriding importance is for the policy formulation, on the basis of appropriate technical information availability and expertise. Following this requirement, implementation requires capacity to be built in improving national statistics on investment and ensuring interagency coordination and consultation with the private sector.
8. The implementation of sanitary and phyto sanitary measures is predicated on the updating of both technicians' expertise and reinforcing procedures of control, inspection and approval. This entails an overhauled internal organization to support the use of dispute settlement mechanisms. The question of having the necessary resources and facilities to recruit and keep trained personnel in specialized agencies is also emphasized.
9. For trade in services main concerns are on improving the regulatory framework and institutions in vital sectors, namely financial, telecommunications and insurance services. The need for appropriate and extended information systems on services is also relevant. It is also recognized that regulatory reforms are needed in some areas as well as the development of norms for issues like e-commerce or digital sign, and promoting the application of international norms to improve quality and reduce prices. Exchange of experiences with relevant institutions in other countries and the issues of services' trade statistics, building of databases and access to technical information are seen as instrumental. It is also important the inter-agency coordination and consultation with private sector and civil society and the staff training required to do so.
10. On the issue of standards the overriding concern is on having in place recognized and responsible authorities who receive notifications regarding technical rules and proceedings, starting by those established by the WTO and other bodies. There is recognition of the need for an information system on norms, technical rules and evaluation processes acceptable to all parties. Support to attend international for a symposia to improve experience is seen as instrumental in the area.
11. On the question of subsidies, antidumping and countervailing measures supervision and implementation of appropriate measures, enhancing the experience of current staff has the first

priority in order to establish and upgrade national institutions responsible for AD/CVD. In addition to this the availability of statistical information and budgetary resources to sustain trained personnel are necessary instrumental aspects that define capacity-building in this sensitive aspect.

#### **IV. Transition to Free Trade**

In the light of the coming negotiations for a Free Trade Agreement between the Central American Countries and The United States (US-CAFTA), the government of Guatemala believes that this agreement offers great opportunities in terms of economic growth and social development. But in order to achieve the latter, great efforts have to be enforced to create the internal economical, social and political changes necessary to create a friendly environment for investment, market competitiveness, and socioeconomic growth.

A successfully transition toward the implementation of a free trade implies deep understanding of internal sectoral needs facing the implementation of US-CAFTA. Not only public actors will have to broadened their efforts and responsibilities, but also the private sectors, organized within the various business chambers, will have to learn how to seize the opportunities free trade agreements offer.

A series of stabilization and structural adjustment measures were introduced in Guatemala from 1991 onwards with the aim of increasing economic efficiency through the implementation of measures to control inflation, strengthen the balance-of-payments and seek to create suitable conditions for sustainable economic growth. This involved a series of structural reforms in the areas of trade, finance, public administration, monetary policy and fiscal policy, etc. Thus, economic performance in the period 1991-2000 was marked by the effects of the application of these measures, as well as by the efforts to adapt the domestic economy to the demands of the economic globalization process and to non-economic factors.

In that sense, the high speed of economical opening which Guatemala has experienced over the last 15 years, within the Central American Integration System, and the internal political efforts to promote growth and development, demands a coherent relation between both internal and external economic policy.

Guatemala has to conciliate its participation in the international market oriented economical system, which is unavoidable and necessary, with the internal economic, political and social development strategies. So, the only way to sort out this apparent dilemma is to closely relate free trade policies to internal development strategies. In that sense, the US-CAFTA offers, due to the importance of the United State's market for the region, a vital scenario for Guatemala and the rest of Central American countries.

#### **I. Legal Framework and Economical Reforms**

The Guatemalan constitutional framework mandates that the State is responsible for the promotion of free trade within a market oriented economy (article 130), and also for creating domestic conditions favoring the promotion of national and foreign capital investments (article

119). Accordingly, the Constitution establishes that the supreme end of the State is to achieve the common good (article 1), and that it is an obligation for the State to guarantee integral fulfillment of the citizen (article 2).

Derived from this constitutional precepts, The Peace Agreements point out that the State is responsible to promote, orient, and regulate socioeconomic development in the country, and complemented with the joint effort of Guatemalan society as a whole, economic efficiency, increase of social services, and social justice will be achieved (Peace Agreement on Socioeconomic Aspects and Agrarian Situation, Commitment· 14 ).

Another important issue has to be considered because of its close relation with transition to free trade and the changes necessary to reap fully the benefits of the US-CAFTA: the National Strategy for Poverty Reduction (2001) , which is very close related to both, the Government Plan 2000-2004, and the fulfillment of the Peace Accords. The Government of the Republic formulated this strategy to improve the living conditions of the poorest Guatemalans and, thus, begin to resolve the most serious problem that society is facing.

More recently, within the context of the Stand-By agreement recently subscribed between the Guatemalan Government and the IMF, the State is committed to strengthen macroeconomic performance, improving fiscal system sustainability, maintaining social oriented public expenditure and dealing with the weaknesses of the financial system. In this sense, macroeconomic stability also requires a healthy, solid and efficient financial system.

During the last few years Guatemala has taken important steps in the establishment of a stable macroeconomic environment. This is reflected on the relative stability of the exchange rate, of the interest rates and a one digit average inflation rate. Low inflation is fundamental for poverty reduction, because it protects the purchasing power of salaries, pensions and savings and it promotes a better allocation of economic resources.

Thus, the fundamental objective of monetary policy will be to maintain low and stable inflation rates, which will be supported by greater fiscal discipline. In fact, the fiscal policy goals for the short term are: fiscal deficit between 1% and 2% of the GDP, public investment equivalent to 4% of the GDP and social expenditure no less than 7% of the GDP. All of the above will be conditioned by the global economic environment.

Macroeconomic stability requires a healthy, solid and efficient financial system. Therefore, an effort will be made to rearrange the system through the approval by Congress of the laws that regulate the national financial system. }

In foreign trade matters, the policy to open and liberalize the economy will be continued, in order to promote the successful insertion of the Guatemalan economy into the international markets, as well as to have efficient and competitive internal markets.

The main challenge during the next few years will be to consolidate this process through a congruent and coordinated administration of the most important macroeconomic policies, as well as the application of reforms in the fiscal area, that will guarantee enough resources to maintain

social investment, and the covering of the fiscal gap produced by the reduction on import duties and tariffs.

## **2. Transition /Taking Advantage of Free Trade Instruments**

All the elements mentioned above describe a crucial momentum for the Guatemalan economy looking forward to achieve an integral sustainable development, in the light of US-CAFTA negotiations. Thereby, this Agreement constitutes an extraordinary opportunity in favor of the sustainable dynamism of national economy, for it will increase market access of national exports to the country's most important trade partner.

Furthermore, taking advantage of the implementation of the US-CAFTA trade agreement will produce:

- a) More certainty in terms of market accesses for Guatemalan exports, in comparison to the unilateral vulnerable nature of the Caribbean Basin Initiative –CBI-.
- b) Increase of foreign investment flows to Guatemala, from the United States and other countries. This will produce more and better remunerated jobs.
- c) Taking advantage of scale economies in order to increase export capacity and improve the value added of our products.
- d) A contribution to the development of market competitiveness in Guatemala.
- e) An increase of the opportunities of domestic and foreign investment, as well as co-investments in order to promote the development of international trade, and in general terms, internal sustainable growth.
- f) Facilitation of free trade of services, which will cause free competition with the result of an increase in the quality of services offered, and a reduction on tariffs, benefiting the final consumer.
- g) Broadening of Bilateral Cooperation; Financial assistance.
- h) Efficient mechanisms for dispute settlements, which will bring certainty to trade-related issues in terms of US-CAFTA.
- i) A more convenient economical, legal and political environment for strategic alliances, increasing business joint ventures between national and foreign capital.
- j) Technological transference's to Guatemala productive sectors.
- k) Modernization of internal productive structure.

## **3. Specific Actions Needed For the Transition ( listed in order of priority)**

### **a) Strengthening of human resources**

Human Capital is the most valuable investment for a country. Therefore, taking into consideration that human beings implement trade regulations and agreements, and also make institutions work efficiently, investment in human capacity building oriented to reap fully the benefits of US-CAFTA is urgently needed, especially in the areas of trade negotiations and international relations. In this sense, because national financial resources are limited, Central American countries will need the financial and technical support of the international organizations and agencies of cooperation.

## **b) Development of infrastructure**

Sustained and high growth is directly related to the increase in investment, both private and public. To achieve this end, the Guatemalan Government will increase public investment in infrastructure in order to reduce operational costs in the country regarding trade related activities, to increase the economy's global efficiency and to attract private investment, especially in matters concerning water systems, sanitation, rural roads and electricity. All of that will continue to create the conditions for the private sector to return its capitals and develop productive activities that will generate employment and income for the whole population.

## **c) Improvement of business environment and investment climate**

As stated in Part A of this document Guatemala's trade legislation is among the most open and currently applies import tariffs of between 0 per cent and 15 per cent. This reflects the adoption in 1997 of a Central American tariff policy along the following lines: raw materials, between 0 and 5 per cent; intermediate and capital goods, 10 per cent; final goods, 15 per cent, with targets being established for the attainment of these tariff levels. Guatemala completed its timetable of tariff reduction in December 1999. In order to bring goods into the country, importers have to pay the valued added tax (VAT) of 12 per cent.

Guatemala has only once applied anti-dumping measures, against imports of grey portland cement from Mexico. At no time have the tariffs applied had to exceed the bound levels. Most-favoured-nation treatment has been applied without discrimination and national treatment is granted to foreigners.

In accordance with its rights and obligations under the WTO, Guatemala applies only those measures necessary to protect human, animal or plant life or health pursuant to the Agreement on the Application of Sanitary and Phytosanitary Measures, the Agreement on Technical Barriers to Trade and Article XX of GATT 1994. Therefore, Guatemala enforces political measures to guaranty the conservation of its environment and the sustainable exploitation of its national resources.

In Relation to Intellectual Property legislation, Guatemala has valid both the Intellectual Property Law (decree 33-98) and the Law of Industrial Property (decree 27-2000). Both normative frameworks are compatible with the international agreements established in the WTO, specifically, the Intellectual Property Agreement. The latter contributes to provide a proper legal environment for foreign investment. A consequence of the Industry Property Law has been to encourage, in the country's industrial and commercial activities, a continuing process of technology and quality improvement, thereby increasing Guatemala's international competitiveness through the internal development of these factors, creating jobs in the formal sector and benefiting consumers.

Regarding consumer protection, competition policy, and the National Quality System, legal and institutional changes are being introduced, including the preparation of three draft laws and the establishment of various institutions. The draft laws are the Law on Consumer Protection, the Law on the National Quality System and the Law on the Promotion of Competition. The institutions which it is planned to establish are the Office for Consumer Protection, the National

Standards Center, the National Accreditation Center, the National Metrology Center and the Commission for the Promotion of Competition.

The draft Law on Consumer Protection is intended to promote, publicize and protect the rights of consumers and users, and establish the offences, penalties and procedures that apply in this field.

The Law on the National Quality System is proposed as a means of gaining entry into the world market and promoting competitiveness and trade relations. It creates mechanisms for the protection of the domestic market for local and imported goods and services.

The Law on the Promotion of Competition seeks to promote free competition so as to increase economic efficiency. It regulates restrictive agreements or arrangements between enterprises, mergers or acquisitions, and the abuse of a dominant market position, all of which may limit market access or in some way unduly restrict competition.

#### **d) Revenue systems and fiscal reform**

At the beginning of the present decade the central government found itself in a critical situation with a fiscal deficit of around 2 per cent of GDP. That meant raising funds to cover current expenditure and left no room for any increase in investment. As a result, it became imperative to revise the fiscal policy with a view to eliminating the above-mentioned deficit and avoiding an increase in the foreign debt. By the end of 2000 the fiscal deficit as a percentage of GDP amounted to 1.8 per cent and the tax burden stood at 10.1 per cent.

Regarding fiscal reforms needed to modernize Guatemalan economy, two issues have to be considered in terms of future fiscal reforms and accommodations to the current fiscal pact, which was approved two years ago by all sectors:

- Guatemala has the second smallest per capita tax rate in Latin America (Haiti is number one), and the international financial organizations recommend a justified increase on taxes, accompanied with an effective, equal and transparent execution and assignment of public resources.
- Another issue is to evaluate if the actual tax rates are efficiently collected, in order to prevent fiscal evasion. In this sense, a revision of the fiscal base is needed in order to maximize fiscal incomes for the government.

**e) Maximizing benefits of trade agreements for the private sector** (e.g., development of export promotion with emphasis on small and medium enterprises, and investment attraction programs). / Benchmarking of competitiveness in major export markets.

For Guatemala the strong competition to attract investment and thereby take advantage of the opportunities to achieve more rapid economic growth that will help to reduce the levels of poverty has meant that policies and strategies to liberalize trade through various forms of negotiation, such as bilateral treaties, free trade agreements, regional negotiations and multilateral agreements, are the immediate objectives in strengthening the foreign trade policy.

The National Competitiveness Program (PRONACOM) is the result of a regional initiative that seeks to create in Central America a platform where productivity, investment and international trade can take place on competitive terms with the most developed regions of the world. Various sectors participate in this program on the basis of joint funding.

Inside the organizational structure of the Ministry of Economics, the Directorate for External Commercial Policy coordinates the activities of the Department of Exports Promotion, which offers technical assistance to medium and small enterprises in elaborating market studies, analysis of demand and supply of potential markets, as well as helping small and medium enterprises to take advantages of free trade agreements.

In relation to the issue of Benchmarking of competitiveness in major export markets, there are no financial resources available to analyze and enforce studies regarding export performance. On a general basis, it is necessary to improve databases, usually provided by the Central Bank, because the one currently available is way too simple, for it is insufficient to perform complex international trade inquiries and analysis.

About Hardware and Software needs, the current available equipment is inadequate. A more efficient and modern equipment is needed in order to process a more complex trade database (software). The current available software used by governmental institutions to analyze international trade, performs poorly and results obsolete for actual needs. A more complex and efficient software is needed in order to analyze demand, supply and competitiveness of our exportable products to the United States and the rest of the world.

**f) Current programs supporting activities** such as: business development, export promotion, environmental impact assessments and trade adjustment assistance. Discussion of areas for improvement.

PRONACOM and The National Program to Support International Trade, financed by the International Development Bank, are the only current Programs supporting business development and export promotion.

These Programs do not cover all the necessities, thus more financial and technical assistance from the international community will be needed in order to generate more Programs and Projects to build a more efficient trade building capacity in Guatemala.

Also, a more efficient mechanism of information and consultation between the Guatemalan Government and civil society -medium and small enterprises willing to take advantage of trade agreements- should be enforced. The latter, because the current consultation process between the government and representatives of the several business chambers (private sector), is performed exclusively at the highest level inside the National Council for Export Promotion –CONAPEX–.

**g) Other issues**

Agriculture. The continuation of the reform process established in Article 20 of the Agreement on Agriculture is of fundamental importance for strengthening the multilateral trading system and improving market access conditions. Guatemala is convinced of the need to work and advance

towards greater liberalization of the agricultural sector and will make all the necessary efforts to achieve that objective. Guatemala considers to be vital to establish better conditions for access to international markets. It is essential as part of this process to ensure that the negotiations give priority to and focus on specific and binding commitments on market access, domestic support, elimination of tariff peaks, the enlargement of quota volumes, the elimination or reduction of in-quota tariffs, the stronger and more disciplined administration of quotas, bound tariff reductions, and the elimination of specific tariff schemes with minimum prices.

Services. In conformity with the negotiations mandated in the Uruguay Round, Guatemala has played an active role in the preparatory process (guidelines) for the new negotiations of the General Agreement on Trade in Services (GATS), which are taking place at the multilateral level at forthcoming meetings within the WTO. Guatemala has expressed its interest in seeing the regulatory framework of the GATS made more specific and, in some cases supplemented, in particular with regard to safeguards and subsidies. It is to be hoped that in the course of these negotiations the developed countries will undertake to apply fully the commitments they have already made. In this connection, it is hoped that these negotiations will lead to the elimination of most of the exceptions to most-favoured-nation treatment in accordance with the level of development of the Member countries.

Dispute settlement system mechanism. Guatemala has made use of the dispute settlement system mechanism which ensures the legality of the system, and that where there are deficiencies as a result of legal loop holes due to events that were not foreseen in the negotiations of the mechanism, additions and improvements may be introduced in the forthcoming negotiations. Special and differential treatment should also be taken into account and granted to the developing/small economies.

#### **4. Future trade policy issues**

Guatemala will continue to shape its trade policies so as to attract investment and create conditions for development, using for this purpose various forms of trade negotiation. Guatemala considers the WTO to be the proper forum to promote trade liberalization and economic development throughout the world. It believes that these objectives can only be achieved if the Member States continue to observe the basic rules and fundamental principles of non-discrimination, transparency and the adoption of decisions by consensus. Accordingly, it will continue to exercise the rights and respect the undertakings acquired within the WTO and will only apply those measures that the WTO Agreements themselves permit.

The country is fully determined to maintain an open market and will continue to apply its policy of trade promotion and liberalization. Accordingly, it will continue to seek to conclude bilateral and regional agreements with a view to supplementing the multilateral efforts on behalf of trade liberalization.

In seeking to open up the economy to the outside world and break with import substitution and thus devise a new export model, conditions are being created for the development of industry. The main purpose of these changes is to create employment, attract productive investment and raise the level of income of the population.

## References

- CEPAL (2002), “Guatemala: Evolución económica durante 2001,” LC/MEX/L.527, June.
- CEPAL (2000), Evolución económica de Guatemala durante 2000, LC/MEX/L.472, May.
- Consejo Nacional de Promoción de Exportaciones (1997), *Política integrada de comercio exterior de Guatemala*, diciembre.
- Economist Intelligence Unit (2002), *Country Report: Guatemala*, [www.eiu.com](http://www.eiu.com), September.
- OMC (2001), *Examen de las políticas comerciales: Guatemala*, Informe de la Secretaría, WT/TPR/S/94, diciembre.
- OMC (2001), *Examen de las políticas comerciales: Guatemala*, Informe del Gobierno, WT/TPR/G/94, diciembre.
- WTO, *Trade Policy Review: Guatemala Minutes*, 14 de diciembre de 2001
- MINECO, Respuestas a cuestionarios de CEPAL sobre política y aplicación de la política comercial, Guatemala, octubre de 2002.
- American Chamber of Commerce, “Resultados de la encuesta realizada a los socios de AmCham con relación al TLC Centroamérica-Estados Unidos”, septiembre de 2002.
- CID Latinoamérica, *Guatemala PYMES*, Estudio sobre Tratados de Libre Comercio, Guatemala, 2002
- CID Latinoamérica, *Guatemala Sociedad Civil*, Estudio sobre Tratados de Libre Comercio, Guatemala, 2002
- CID Latinoamérica, *Guatemala Industriales*, Estudio sobre Tratados de Libre Comercio, Guatemala, 2002
- CID Latinoamérica, *Guatemala Agrícola y Agroindustrial*, Estudio sobre Tratados de Libre Comercio, Guatemala, 2002
- CENCIT, “Elementos preliminares para la cooperación en el marco del Tratado de Libre Comercio Estados Unidos-Centroamérica
- SEGEPLAN/MINECO, Plan de Modernización Económica 2002-2004, Guatemala, Junio de 2002.
- SEGEPLAN, Estrategia de Reducción de la Pobreza. El Camino de la Paz, Guatemala, Noviembre de 2002.