

# GUATEMALA

## TRADE SUMMARY

The U.S. goods trade surplus with Guatemala was \$1.2 billion in 2010, an increase of \$507 million from 2009. U.S. goods exports in 2010 were \$4.4 billion, up 14.8 percent from the previous year. Corresponding U.S. imports from Guatemala were \$3.2 billion, up 2.2 percent. Guatemala is currently the 43rd largest export market for U.S. goods.

The stock of U.S. foreign direct investment (FDI) in Guatemala was \$961 million in 2009 (latest data available), down from \$1.3 billion in 2008.

## IMPORT POLICIES

### Free Trade Agreement

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

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

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

In February 2011, the CAFTA-DR Free Trade Commission (FTC), the central oversight body for the agreement, met for the first time in San Salvador, El Salvador. The FTC reviewed the implementation of the agreement and its trade and economic impact on the region and agreed to certain changes to strengthen the agreement's operation. The FTC discussed a broad range of ways to enhance competitiveness in the region and endorsed several initiatives to generate new opportunities for all of the countries to realize the benefits of the CAFTA-DR Agreement, with a heightened focus on small- and medium-sized businesses.

### Tariffs

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

## FOREIGN TRADE BARRIERS

However, under the CAFTA-DR, 100 percent of U.S. industrial trade will enter Guatemala duty-free by 2015. Nearly all textile and apparel goods that meet the Agreement's rules of origin now enter Guatemala duty-free and quota-free, promoting new opportunities for U.S. and regional fiber, yarn, fabric, and apparel manufacturing companies.

Under the CAFTA-DR, more than half of U.S. agricultural exports now enter Guatemala duty-free. Guatemala will eliminate its remaining tariffs on nearly all agricultural products by 2020 (2023 for rice and chicken leg quarters and 2025 for dairy products). For certain products, tariff-rate quotas (TRQs) permit some immediate duty-free access for specified quantities during the tariff phase out period, with the duty-free amount expanding during that period. Guatemala will liberalize trade in white corn through expansion of a TRQ, rather than by tariff reductions.

### **Nontariff Measures**

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

U.S. companies have raised concerns that the Guatemalan customs authority has not provided adequate advance notice regarding administrative changes in documentation requirements for imported shipments, such as information needed on certifications of origin. The United States raised this issue with the customs authority and received assurances that future changes will be communicated in advance and will be available on the tax and customs website: <http://portal.sat.gob.gt/sitio/>. However, in 2010, Guatemala retroactively reviewed some imports from prior years and assessed duties and penalties for certificates of origin that were deemed to have been improperly completed, despite this lack of advance notice. The United States has raised this issue with Guatemalan authorities, but it remains unresolved.

### **GOVERNMENT PROCUREMENT**

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

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

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

## **EXPORT SUBSIDIES**

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

Guatemala provides tax exemptions to investors in free trade zones and maintains duty drawback programs aimed mainly at garment manufacturing and assembly operations or “*maquiladoras*” (firms that are permitted to operate outside a free trade zone and still receive tax and duty benefits). The Law for the Promotion and Development of Export Activities and Drawback provides tax and duty benefits to companies that import over half of their production inputs/components and export their completed products. Investors in this sector are granted a 10 year exemption from both income taxes and the Solidarity Tax, which is Guatemala’s temporary alternative minimum tax. Additionally, companies are granted an exemption from payment of tariffs and value added taxes on imported machinery, and a one year suspension (extendable to a second year) of the same tariffs and taxes on imports of production inputs and packing material. Taxes are waived when the goods are re-exported.

## **INTELLECTUAL PROPERTY RIGHTS (IPR) PROTECTION**

Guatemala was listed on the Watch List in the 2010 Special 301 report. The United States recognized Guatemala’s efforts to increase enforcement actions, including by appointing a new IPR prosecutor and establishing an interagency IPR working group. These efforts have led to an increase in the number of raids, seizures, and prosecutions. The report highlighted the need for continued efforts to implement Guatemala’s obligations under the CAFTA-DR, including those to ensure that proper resources are available for its enforcement activities, to achieve improved coordination among enforcement agencies, and to concentrate its enforcement efforts on manufacturers of pirated and counterfeit goods.

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

## **SERVICES BARRIERS**

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

Foreign enterprises may provide licensed professional services in Guatemala only through a contract or other relationship with an enterprise established in Guatemala.

## **INVESTMENT BARRIERS**

Some U.S. companies operating in Guatemala have complained that complex and unclear laws and regulations continue to constitute practical barriers to investment.

## **FOREIGN TRADE BARRIERS**

## **OTHER BARRIERS**

Some U.S. firms and citizens have found corruption in government, including in the judiciary, to be a significant concern and a constraint to successful investment in Guatemala. Administrative and judicial decision-making appear at times to be inconsistent, non-transparent, and very time consuming.