

GUATEMALA

TRADE SUMMARY

The U.S. goods trade surplus with Guatemala was \$1.4 billion in 2012, a decrease of \$71 million from 2011. U.S. goods exports in 2012 were \$5.9 billion, down 3.8 percent from the previous year. Corresponding U.S. imports from Guatemala were \$4.6 billion, down 3.4 percent. Guatemala is currently the 40th largest export market for U.S. goods.

The stock of U.S. foreign direct investment (FDI) in Guatemala was \$1.1 billion in 2011 (latest data available), slightly higher than in 2010.

Free Trade Agreement

The Dominican Republic-Central America-United States Free Trade Agreement (CAFTA-DR or “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. The CAFTA-DR significantly liberalizes trade in goods and services as well as 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 United States hosted a Free Trade Commission (FTC) meeting on January 23, 2012 in Miami. At that meeting the CAFTA-DR countries recognized continued growth in trade and integration, and acted to further strengthen CAFTA-DR institutions and initiatives.

In 2012, the Parties implemented changes to a number of the Agreement’s rules of origin for textile and apparel goods to enhance the competitiveness of the region’s textiles sector. The changes to these rules of origin were made pursuant to a Decision of the first FTC meeting in February 2011, and are aimed at facilitating regional sourcing and encouraging greater integration of the textile and apparel supply chain in the region. The new rules became effective on October 13, 2012, after the other CAFTA-DR countries had completed their respective domestic procedures, and the U.S. Congress passed legislation implementing the changes for the United States.

IMPORT POLICIES

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.

Under the CAFTA-DR, however, 100 percent of U.S. consumer and industrial goods 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 virtually 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 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 continual expansion of a TRQ, rather than by the reduction of the out-of-quota tariff.

Nontariff Measures

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

Guatemala's denial of claims for preferential treatment for U.S. products under the CAFTA-DR continues to be a source of difficulty in exporting to Guatemala. U.S. companies have raised concerns that the Guatemalan Customs Administration (part of the Superintendence of Tax Administration, or SAT) has not provided adequate advance notice regarding administrative changes in documentation requirements for imported shipments, such as information needed for certifications of origin. The United States raised this issue with the Customs Administration and received assurances that future changes would be communicated in advance and be available on the tax and customs website: <http://portal.sat.gob.gt/sitio/>. Despite prior assurances, these changes are being implemented on a retroactive basis, without advance notification. In 2010, Guatemala also began reviewing some imports from prior years and assessing duties and penalties for certifications of origin that were deemed to have been improperly completed or were found to have clerical or technical errors or mistakes. In October 2011, the CAFTA-DR FTC took a decision agreeing on the "Common Guidelines for the Interpretation, Application and Administration of Chapter Four of the Dominican Republic-Central America-United States Free Trade Agreement," which affirmed that an importer, exporter, or producer, in a CAFTA-DR country shall be given a reasonable period of time to submit corrected certifications of origin. The government of Guatemala had assured the United States that these "Common Guidelines" would help resolve this particular type of problem.

Nonetheless, in 2011 and 2012, there continued to be an increase in the initiation by the Guatemalan Customs Administration of audits of claims for preference under the CAFTA-DR for merchandise that entered in prior years. Such audits have resulted in the denial of preferential treatment under the CAFTA-DR, as well as in collection of the back duties assessed and a 12 percent VAT for up to the three previous years, and a fine of up to double the rate of the tariff. Such penalties have reportedly been imposed in cases in which the claims for the preferential treatment under the CAFTA-DR were not deliberately incorrect. For example, stakeholders report that Guatemalan customs authorities are challenging declared tariff classifications, as to which there should not be any confusion, and trying to reclassify products as products subject to a higher tariff. These practices raise concerns that the Customs Administration appears to be denying U.S. products the preferential treatment under the CAFTA-DR and instead imposing tariffs and other retroactive charges as a means of increasing revenue to meet overall yearly revenue targets. The United States will continue to raise these concerns with Guatemala.

In early 2012, the Guatemalan government also approved a new law that modified customs procedures. Importers of U.S. products and business chambers that represent U.S. companies have raised concerns with the new customs law which have created problems and delays for the importation of goods. Due to complaints about the law, the Guatemalan Congress is considering revisiting the customs law. The United States will continue to monitor the progress of the new customs law to address any possible trade obstacles.

GOVERNMENT PROCUREMENT

The CAFTA-DR requires that procuring entities use fair and transparent procurement procedures, including advance notice of purchases as well as timely and effective bid review procedures, for procurement covered by the Agreement. Under the CAFTA-DR, U.S. suppliers are permitted to bid on procurements of most Guatemalan government entities, including government ministries and sub-central and state-owned entities, 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.

In 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.

Some U.S. companies have complained that the procurement process is not transparent, especially when the government makes a direct purchase and when a CAFTA-DR covered entity does not provide the required 40 days from the notice of procurement for interested parties to prepare and submit bids. There has been an increased tendency by some government entities to undertake major procurements via unusual special purpose mechanisms, such as on an emergency basis, enabling the procuring entity to make a direct purchase from a pre-selected supplier and avoid competitive bidding and the public tender process. The government has canceled some direct purchases after receiving complaints from interested bidders. The United States will continue to engage with the government of Guatemala to promote fair and transparent procurement procedures consistent with the CAFTA-DR provisions. This practice raises questions regarding Guatemala's government procurement obligations under CAFTA-DR.

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 compliance with 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 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 PROTECTION

Guatemala remained on the Watch List in the 2012 Special 301 Report. The United States recognized that Guatemala continued to make progress in 2011 by passing legislation to create penalties for the production and distribution of counterfeit medications. The report also recognized Guatemala's efforts to increase enforcement actions, highlighting the continued efforts of the intellectual property rights (IPR) prosecutor and the increase in seizures and corresponding convictions of IPR violators. However, inadequate allocation of resources for the IPR prosecutor's office was noted as an area of concern. The report highlighted the need for continued efforts to ensure that proper resources are available for its enforcement activities, to achieve improved coordination among enforcement agencies, and to continue its enforcement efforts against 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

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. Resolution of business and investment disputes through Guatemala's judicial system is also extremely time-consuming, and civil cases can take many years to resolve. Justice system institutions can be prone to third-party influence which interferes with the due process of law and disadvantages U.S. companies on legal business dispute cases.

Two U.S. companies operating in Guatemala filed claims under the Investment Chapter of the CAFTA-DR against the government of Guatemala with the Centre for the Settlement of Investment Disputes (ICSID) in 2007 and 2010. The ICSID arbitration issued its ruling on the first case in June 2012 and stated that the government had infringed the minimum standard of treatment under Article 10.5 of the CAFTA-DR. The ICSID required the government of Guatemala to pay more than \$11.3 million to the company. The second case remains pending before the ICSID.

Delays and uncertainty in obtaining licenses from relevant Guatemalan authorities for exploration and operation in extractive industries has the effect of inhibiting current and potential investments from U.S. firms.

The United States continues to engage with Guatemala to ensure fair and transparent treatment for U.S. companies in commercial and investment-related cases, consistent with CAFTA-DR provisions.

OTHER BARRIERS

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