

GUATEMALA

TRADE SUMMARY

In 1999, the U.S. trade deficit with Guatemala was \$454 million, an increase of \$323 million from the U.S. trade deficit of \$131 million in 1998. U.S. merchandise exports to Guatemala were \$1.8 billion, a decrease of \$129 million over 1998. Guatemala was the United States' 42nd largest export market in 1999. U.S. imports from Guatemala were \$2.3 billion in 1999, an increase of \$194 million from the level of imports in 1998. The stock of U.S. foreign direct investment in Guatemala amounted to \$429 million in 1998. U.S. direct investment is concentrated in manufacturing, agriculture, and finance.

IMPORT POLICIES

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

In October 1996 Guatemala announced a new poultry import policy that expanded its annual Tariff-Rate Quota (TRQ) from 3600 metric tons to 7000 metric tons with an in-quota tariff of 15 percent. This import policy exceeds Guatemala's negotiated WTO obligations for poultry imports. However, the Government of Guatemala continues to use reference prices. For tariff purposes, poultry parts are valued at \$.56 per pound, irrespective of actual invoice price. The use of this valuation effectively doubles the tariff on poultry imports. The Government of Guatemala has committed to implement the WTO Customs Valuation Agreement, which does not permit the use of arbitrarily-established prices in determining customs valuation, by July 21, 2000.

STANDARDS, TESTING, LABELING AND CERTIFICATION

Under Guatemalan law, food products sold in the domestic market must be tested, registered and carry labels in Spanish. The law requires that every size or form of product sold be registered separately, even if the product content is of identical composition. Personnel trained and available to carry out this process are in short supply. Importers complain that the product registration and testing process, though not otherwise overly burdensome, is time consuming. Products are often damaged during the process and are susceptible to pilferage while awaiting completion of the tests and registration. Enforcement of the product registration and labeling requirement has been irregular, but is becoming more strict.

GOVERNMENT PROCUREMENT

Though the Government Procurement Law requires all government purchases over \$160,000 to be submitted for public competitive bidding to no fewer than five bidders, most government contracts are awarded without following prescribed procedures. Foreign suppliers must meet pre-qualification requirements and submit bids through locally registered representatives, a bureaucratic process which can place foreign bidders at a competitive disadvantage. Guatemala is not a signatory of the WTO Government Procurement Agreement .

INTELLECTUAL PROPERTY RIGHTS PROTECTION

Guatemala's protection of intellectual property and the enforcement of existing laws and regulations is inadequate. Pursuant to Section 182 of the Omnibus Trade and Competitiveness Act of 1988 (Special 301), Guatemala was placed on the Watch List in 1992 and remained there through 1998 because of its failure to solve copyright protection deficiencies, improve enforcement, and dismantle market access barriers. In 1999, Guatemala was elevated to the Priority Watch List. Guatemala's continuing failure to protect and enforce its laws shows an indifference to its international obligations and bilateral commitments.

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Copyrights

Guatemala passed a new Copyright Law in 1998 that protects computer software programs. However, the law fails to authorize government prosecution of copyright crimes. Instead, private copyright owners are forced to initiate private civil or criminal actions to protect their rights. Although the software industry has successfully brought some civil actions against resellers of pirated software, distribution and use of illegally copied software – including by government agencies – is commonplace.

In 1992, the Government of Guatemala passed a law authorizing the establishment of a regulatory agency to police the cable television industry. However, the regulatory entity has not been established and regulation of this industry is insufficient to protect U.S. rights holders. Piracy of signals by cable system operators continues, though the unauthorized transmission of premium channels has diminished. Local broadcast channels occasionally re-transmit premium or pay-per-view events. A new law to regulate the cable television industry was drafted in July 1997, but there has been no action taken in the legislature. A report prepared by the International Intellectual Property Alliance (IIPA) estimates that copyright infringements in Guatemala cost U.S. firms \$24.5 million in 1998. Industry sources estimate that 85 percent of software continues to be pirated.

Patents

Guatemala's patent law (153-85) is out of date and deficient in several areas. For example, it limits protection to only 15 years (10 years for food, beverages, medicines, and agrochemicals) and requires mandatory local manufacturing of the patented product. Enforcement of the law is limited. A number of subject areas are not patentable, including mathematical methods, living organisms, commercial plans, and chemical compounds or compositions. Guatemala does not patent protection for pharmaceutical and agricultural products, nor does it appear to provide in the alternative a

mailbox mechanism and exclusive marketing rights, as required by the TRIPS agreement.

Trademarks

Guatemala's law provides insufficient protection for owners of well-known trademarks. Exclusive rights are granted on a first-to-file basis, thus permitting third parties to register and gain exclusive use of internationally known trademarks. Applications by non-rights holders to register internet domain names based on registered trademarks or well-known or famous names are regularly approved by the local registrar. Sales of counterfeit clothing and other merchandise are common in Guatemala.

SERVICES BARRIERS

Guatemala still has not submitted an acceptance to the Fourth Protocol to the General Agreement on Trade in Services, which was necessary to bring its commitments on basic telecommunications services into effect. Instead, Guatemala proposed unilaterally to modify its commitments, pledged in the 1997 WTO Basic Telecommunications Agreement, by deleting the words "cost-oriented" and "reasonable" from the interconnection obligations contained in the WTO reference paper on the pro-competitive regulatory principles. The United States seeks action by Guatemala to accept the Fourth Protocol and its earlier, more complete proposed commitments. Majority foreign ownership in telecommunications services is not permitted. International traffic must be routed through the facilities of an enterprise licensed by the Guatemalan Superintendency of Telecommunications. Commercial radio or television stations must have at least 75 percent Guatemalan ownership, although this requirement is not strictly enforced.

INVESTMENT BARRIERS

Guatemala generally provides foreign investors with national treatment, though its complex and confusing laws, regulations and red tape can sometimes be discouraging. The new

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Investment Law passed in 1998 addresses some of these issues, including providing for national treatment for foreign investors. However, restrictions on foreign investment remain in several sectors of the economy, including auditing, insurance, mineral exploration, forestry and the media.