

# GUATEMALA

## TRADE SUMMARY

The U.S. trade deficit with Guatemala was \$607 million in 2004, a decrease of \$77 million from \$683 million in 2003. U.S. goods exports in 2004 were \$2.5 billion, up 12.6 percent from the previous year. Corresponding U.S. imports from Guatemala were \$7.1 billion, up 4.3 percent. Guatemala is currently the 40<sup>th</sup> largest export market for U.S. goods.

The stock of U.S. foreign direct investment (FDI) in Guatemala in 2003 was \$294 million, down from \$303 million in 2002.

## IMPORT POLICIES

### Free Trade Agreement

The United States engaged in free trade agreement negotiations with five Central American countries (Costa Rica, El Salvador, Guatemala, Honduras, and Nicaragua) in 2003. The United States concluded negotiations with El Salvador, Guatemala, Honduras, and Nicaragua in December 2003 and with Costa Rica in January 2004. In May 2004, the six countries signed the United States – Central America Free Trade Agreement. During 2004, the United States and the Central American countries engaged in negotiations with the Dominican Republic to integrate that country into the free trade agreement. On August 5, 2004, the seven countries signed the Dominican Republic – Central America – United States Free Trade Agreement (CAFTA-DR). El Salvador ratified the Agreement in December 2004 and Honduras ratified in March 2005. Legislative approval is pending in the United States and the other signatories to the Agreement.

The CAFTA-DR will remove barriers to trade with and investment in the region and will further regional economic integration. The CAFTA-DR will also require the Central American countries and the Dominican Republic to undertake needed reforms to confront many of the problems noted below in areas including: customs administration; protection of intellectual property rights; services, investment, and financial services market access and protection; government procurement; sanitary and phytosanitary (SPS) barriers; and other non-tariff barriers.

### Tariffs

Guatemala's tariffs on most goods from outside the Central American Common Market (CACM) are currently within the zero to 15 percent range. There are exceptions, however, including tariffs of up to 40 percent for alcoholic beverages and up to 20 percent for precious and semiprecious stones, various types of vehicles, watches, and firearms and munitions. Other exceptions include the higher tariffs applied to agricultural commodity imports in excess of any applicable tariff rate quota (TRQ). The average applied rate on all products is approximately 5

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percent to 6 percent. Guatemala also applies minimum import values (MIVs) on used auto parts and used clothes. Once the CAFTA-DR goes into effect, about 80 percent of U.S. industrial and commercial goods will enter the region duty-free, with the remaining tariffs phased out over ten years.

Nearly all textile and apparel goods that meet the Agreement's rules of origin will be duty-free and quota-free immediately, promoting new opportunities for U.S. and regional fiber, yarn, fabric and apparel manufacturing. (The Agreement's tariff treatment for textile and apparel goods may be made retroactive to January 1, 2004.)

Under the CAFTA-DR, Guatemala will eliminate its tariffs on nearly all agricultural products within 15 years (18 years for rice and chicken leg quarters and 20 years for dairy products). For the most sensitive products, tariff rate quotas will permit some immediate zero-duty access for specified quantities during the tariff phase-out period, which will expand over time. Guatemala will liberalize trade in white corn through expansion of a TRQ.

The Agreement requires transparency and efficiency in administering customs procedures, including the CAFTA-DR rules of origin. Under the CAFTA-DR, Guatemala committed to ensure greater procedural certainty and fairness in the administration of these procedures, and all Parties agreed to share information to combat illegal transshipment of goods.

## **STANDARDS, TESTING, LABELING AND CERTIFICATION**

Guatemalan law requires that food products sold in the domestic market be tested, registered and labeled in Spanish, although stick-on labels are permitted. Products sold in bulk are exempt from the labeling requirement unless they are to be sold at the retail level as an individual unit. Enforcement of product registration and labeling requirements has been inconsistent but is improving.

When the United States and Central America launched the free trade agreement negotiations, they initiated an active working group dialogue on SPS barriers to agricultural trade that met alongside the negotiations to facilitate market access. The objective was to leverage the impetus of active trade negotiations to seek difficult changes to the Central American countries' SPS regimes. Through the work of this group, Guatemala has committed to resolve specific measures affecting U.S. exports to Guatemala. In particular, for meat, dairy and poultry, Guatemala will move toward recognizing import eligibility for all plants inspected under the U.S. food safety and inspection system. For distilled spirits, U.S. industry welcomes the trade-facilitative initiative of the five Central American countries, including Guatemala, to develop common standards for distilled spirits products. However, outstanding concerns remain, such as alcohol content, brand registration and certification requirements.

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## **GOVERNMENT PROCUREMENT**

Guatemala is not a party to the WTO Government Procurement Agreement. Currently, Guatemala's Government Procurement Law requires most government purchases over \$113,000 to be submitted for public competitive bidding. Contracts may be awarded when there is only one bidder. The government occasionally declares certain projects a matter of national emergency, thereby avoiding the competitive bidding process. Foreign suppliers must submit their bids through locally registered representatives, a bureaucratic process that can place foreign bidders at a competitive disadvantage. Additionally, U.S. companies have long alleged that significant corruption exists in the public procurement process and is a barrier to entry. However, in March 2004, the new Berger Administration made mandatory the use of Guatecompras, an Internet-based electronic system to publicize Guatemala's procurement needs, which is improving transparency in the government procurement process.

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

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

CAFTA-DR obligations for IPR will strengthen Guatemala's IPR protection regime to conform with, and in many areas exceed, WTO norms. CAFTA-DR obligations would also provide stronger deterrence against piracy and counterfeiting by criminalizing end user piracy and requiring Guatemala to authorize the seizure, forfeiture, and destruction of counterfeit and pirated goods and the equipment used to produce them. The CAFTA-DR text also mandates both statutory and actual damages for copyright and trademark infringement which would ensure that monetary damages can be awarded even when it is difficult to assign a monetary value to the violation.

### **Patents**

Guatemala's 2000 Industrial Property Law made improvements to the protection afforded to patent holders, increasing the term of protection for a patent to 20 years from the date of filing the patent application. It also increased the number of products and services that are considered patentable, including living organisms, commercial plans and chemical compounds or compositions. This law provided patent protection for pharmaceutical and agricultural products for the first time and established a mailbox system to process cases filed since 1995.

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## **Copyrights**

Piracy of copyrighted material, including videos, optical discs (CD-R & DVD-R formats), and software, remains widespread, and enforcement of existing legislation remains a concern. Some progress has been achieved in concluding valid licensing agreements with copyright holders and in reducing the incidence of pay television piracy (though rural operators still remain outside the legitimate system). Guatemala has ratified the WIPO Copyright Treaty (WCT) and the WIPO Performances and Phonograms Treaty (WPPT). CAFTA-DR enforcement provisions are designed to help reduce copyright piracy.

## **Trademarks**

Exclusive rights for trademarks are granted on a first-to-file basis, thus permitting third parties to register and gain exclusive use of well-known or famous trademarks. A dispute resolution system has been established in the event that a well-known or famous trademark is granted to a third party. The local Internet domain name registrar does not accept applications for well-known and famous names from applicants who are not the trademark holders as frequently as it once did. Additionally, when receiving an Internet domain name registration, the domain name owner is required to submit the registration to the WIPO online dispute resolution system in the event of a challenge by a third party. CAFTA-DR enforcement provisions are designed to help reduce trademark infringement.

## **SERVICES BARRIERS**

Currently, international telephone traffic must be routed through the facilities of an enterprise licensed by the Guatemalan Superintendence of Telecommunications. U.S. companies have raised allegations of anti-competitive behavior, including unilateral changes of interconnection rates, by the country's dominant fixed line telephone service provider, Telgua, which is a subsidiary of Telmex of Mexico. Guatemala's courts have ruled against Telgua in those cases where a verdict was reached, but the anticompetitive practices continue. The CAFTA-DR will require that Guatemala further open its telecommunications market to competition on a nondiscriminatory basis.

Foreign banks may open branches or subsidiaries in Guatemala subject to the conditions of the Monetary Board, including capital and lending requirements based exclusively on the balance sheet of the local entity. Branches and subsidiaries must be inscribed in the Mercantile Registry, as is the case with any business.

Some professional services may only be supplied by professionals with locally recognized academic credentials. Notaries public must be Guatemalan nationals. Under the CAFTA-DR, as with banks, U.S. insurance companies would have full rights to establish subsidiaries and joint ventures upon entry into force of the agreement, with branching rights phased in. U.S. insurance suppliers would also be able to provide insurance cross-border in areas such as Marine, Aviation

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and Transportation insurance, goods in international transit, reinsurance as well as services auxiliary to insurance such as claims settlement, actuarial, risk assessment and consulting. Foreign enterprises may provide licensed professional services in Guatemala through a contract or other relationship with an enterprise established in Guatemala.

## **INVESTMENT BARRIERS**

Guatemala's 1998 investment law generally provides for national treatment of foreign investment. However, specific restrictions remain in several sectors of the economy, including auditing, insurance and forestry, although these restrictions are not always enforced. Complex and confusing laws, regulations, red tape, and corruption constitute practical barriers to investment. When the CAFTA-DR is implemented, the agreement will establish a more secure and predictable legal framework for U.S. investors operating in Guatemala.

The CAFTA-DR will establish a more secure and predictable legal framework for U.S. investors operating in Guatemala. All forms of investment will be protected, including enterprises, debt, concessions, contracts and intellectual property. U.S. investors will enjoy, in almost all circumstances, the right to establish, acquire and operate investments in Guatemala on an equal footing with local investors. Among the rights afforded to U.S. investors are due process protections and the right to receive a fair market value for property in the event of an expropriation. Investor rights will be backed by an effective, impartial procedure for dispute settlement that is fully transparent. Submissions to dispute panels and panel hearings will be open to the public, and interested parties will have the opportunity to submit their views.

## **OTHER BARRIERS**

Past allegations of official corruption, security concerns and an anti-business attitude under the previous administration (there was a change in administration in January 2004) may have weakened investors' confidence and affected investment and trade decisions related to Guatemala. The anti-corruption provisions in the Agreement require each government to ensure that bribery in matters affecting trade and investment is treated as a criminal offense, or is subject to comparable penalties, under its law.

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