

GUATEMALA

TRADE SUMMARY

In 2000, the U.S. trade deficit with Guatemala was \$710 million, an increase of \$256 million from the U.S. trade deficit of \$454 million in 1999. U.S. merchandise exports to Guatemala were \$1.9 billion, an increase of \$84 million (4.6 percent) from the level of U.S. exports to Guatemala in 1999. Guatemala was the United States' 42nd largest export market in 2000. U.S. imports from Guatemala were \$2.6 billion in 2000, an increase of \$339 million (15.0 percent) from the level of imports in 1999.

The stock of U.S. foreign direct investment (FDI) in Guatemala in 1999 amounted to \$453 million, an increase of 11.9 percent from the level of U.S. FDI in 1998. U.S. FDI in Guatemala is concentrated largely in the manufacturing and petroleum sectors.

IMPORT POLICIES

Guatemala is a member of the Central American Common Market (CACM), which also includes El Salvador, Honduras, Nicaragua and Costa Rica. With a few exceptions, including agricultural products, there are no tariffs on goods originating within the CACM. CACM members are working toward the full implementation of a Common External Tariff (CET) with a range of zero to 15 percent. Guatemala's tariffs on most goods from outside the CACM are currently within the zero to 15 percent range, although there are exceptions of up to 27 percent. In 1996, El Salvador and Guatemala initiated a Customs Integration Process that will involve the harmonization of tariffs, taxes and trade policies between the two countries. In October 1996, Guatemala announced a poultry import policy that expanded its annual tariff-rate quota (TRQ) from 3,600 metric tons to 7,000 metric tons with an in-quota tariff of 15 percent and an out-quota tariff of 45 percent. This import policy exceeds Guatemala's negotiated WTO obligations for poultry imports. Nevertheless, the Government of Guatemala continues to use reference prices in a way that may restrict imports.

For purposes of calculating tariffs, poultry parts are valued at \$.51 per pound with a \$.05 value added tax. The final valuation amounts to \$.56 per pound, irrespective of actual invoice price. The use of this valuation effectively doubles the tariff on poultry imports.

The Government of Guatemala had 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. However, before it was scheduled to implement, Guatemala requested a sixteen-month extension which was granted by the WTO Committee on Customs Valuation. Guatemala is now following its own work program to come into compliance with the WTO valuation agreement by the November 2001 deadline.

STANDARDS, TESTING, LABELING AND CERTIFICATION

Under Guatemalan law, food products sold in the domestic market must be tested, registered and carry labels in Spanish. However, Guatemala allows stick-on labels. Furthermore, products sold in bulk are exempt from the labeling requirement unless they are to be sold at the retail level as an individual unit. 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. The registration and testing process takes six weeks regardless of the company or product. 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 stricter.

GOVERNMENT PROCUREMENT

Though the Government Procurement Law requires all government purchases over \$160,000

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to be submitted for public competitive bidding to no fewer than five bidders, many government contracts are awarded without following prescribed procedures. Foreign suppliers no longer need to meet pre-qualification requirements, though it is sometimes required of their local counterparts. Bids are submitted through locally registered representatives, a bureaucratic process which can place foreign bidders at a competitive disadvantage. The government often declares certain projects a matter of national emergency, thereby avoiding the competitive bidding process. Guatemala is not a signatory of the WTO Government Procurement Agreement.

INTELLECTUAL PROPERTY RIGHTS PROTECTION

A new Industrial Property Law and an Amendments to the 1998 Copyright Law went into effect November 1, 2000. These new laws greatly improve the legal basis for protecting intellectual property rights (IPR) in Guatemala. In addition, the law requires the Attorney General to appoint a special prosecutor for IPR violations, a provision that will facilitate enhanced enforcement of the new protections. This is part of a significant improvement in the general enforcement provisions. Prior to this, IPR violations were not criminal offenses, rather they required the rights holders to initiate private actions to protect their rights. However, the special prosecutor has not yet been named and enforcement has not yet met expectations.

Copyrights

There have been no major actions under the amended Copyright Law, but awareness of the principle of copyright protection is improving. Nevertheless, the distribution and use of illegally copied or pirated software – including by government agencies – remains commonplace.

The most dramatic change since the introduction of the new Copyright Law has been the reduction

in the piracy of signals by cable system operators. The government regulator of the cable industry, the Cable Unit, has been instrumental in promoting the awareness of cable piracy as a crime and has cooperated with the local representatives of U.S. rights holders. Nevertheless, many cable operators continue to pirate premium and other signals, forcing local owners of these rights to pursue legal action. The efficiency of the investigation process by the prosecutors and the court system will be a significant test of the seriousness with which the prosecutor's office takes copyright protection.

Patents

Guatemala's new Industrial Property Law greatly increases the protections afforded to patent holders, increasing the length of protection to 20 years. It also increased the number of products and services that are considered patentable, including living organisms, commercial plans and chemical compounds or compositions. Nevertheless, mathematic formulas, scientific theories and economic methods remain unpatentable and exceptions are allowed only for national security or health purposes. The new law provides patent protection for pharmaceutical and agricultural products and has established a mailbox system to process cases filed since 1995.

Trademarks

Guatemala's new laws provide protection for the owners of well-known trademarks. However, exclusive rights for less-known trademarks are granted on a first-to-file basis, thus permitting third parties to register and gain exclusive use of these 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 domain name registrar no longer registers trademarks of well-known and famous names as frequently as before. Additionally, when receiving a domain name, the domain name owner is required to submit the registration to the WIPO

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online dispute resolution system in the event of a challenge by a third party.

SERVICES BARRIERS

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. An Investment Law passed in 1998 addressed some of these issues, including providing for national treatment for foreign investors. However, restrictions on foreign investment remain in several sectors of the economy, though they are not always enforced. The sectors include auditing, insurance, forestry and the media.