

# GUATEMALA

In 1996, the U.S. trade deficit with Guatemala was \$109 million, a shift of \$228 million from the U.S. trade surplus of \$119 million in 1995. U.S. merchandise exports to Guatemala were \$1.6 billion, a decrease of \$82 million (5.0 percent) from the level of U.S. exports to Guatemala in 1995. Guatemala was the United States' forty-sixth largest export market in 1996. U.S. imports from Guatemala were \$1.7 billion in 1996, an increase of \$146 million (9.6 percent) from the level of imports in 1995.

The stock of U.S. foreign direct investment (FDI) in Guatemala in 1995 was \$155 million, an increase of 15.7 percent from the level of U.S. FDI in 1994. U.S. FDI in Guatemala is concentrated largely in the manufacturing, petroleum, and finance sectors.

## IMPORT POLICIES

### Tariffs

Guatemala is a member of the Central American Common Market (CACM), which also includes Costa Rica, Nicaragua, El Salvador, and Honduras. CACM members are working toward the full implementation of a common external tariff (CET) ranging between 5 and 20 percent for most products. In 1995 the members of the CACM agreed to reduce the CET to between 0 and 15 percent, but allowed each member country to determine the timing of the changes. With the exception of certain items, there are no duties for products traded among CACM members.

### Customs Valuation Policies for Poultry

Notwithstanding agreement to switch to transaction value for the calculation of tariffs on chicken parts as part of its Uruguay Round commitments, the Government of Guatemala continues to use a reference price methodology. Guatemala still applies an artificial valuation policy on tariffs for poultry part imports. For tariff purposes, poultry parts are valued at \$0.56 per pound, irrespective of the actual invoice price. This policy effectively doubles the tariff on imported poultry. Guatemalan poultry producers are seeking further protection by pressing the government to increase the valuation price to \$0.69 per pound and to increase the out-of-quota duty to 200 percent. If taken, these actions will effectively prohibit legal imports of poultry meat correctly valued at over \$6 million.

### Poultry Tariff Rate Quota

In October 1996, Guatemala announced a new poultry import policy that expanded the annual tariff rate quota (TRQ) from 3,600 to 7,000 metric tons for 1997. In addition, Guatemala reduced the in-quota tariff from 20 to 15 percent. The new import policy far exceeds Guatemala's negotiated World Trade Organization (WTO) obligations for poultry imports.

## **Guatemala**

### **Grain Price Bands**

Price bands for corn and rice were eliminated in late 1995. Guatemala has yet to formally eliminate price bands for sorghum. However, in view of the January 1, 1997, across-the-board reductions in tariffs on most agricultural products, price bands for sorghum have been effectively eliminated.

### **Apple Import Permits**

U.S. companies have cited the uncertainty of obtaining an import license as the reason they have not expanded their investment to distribute U.S. apples. The result is an estimated \$1 million in lost export sales.

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

Under Guatemalan law, products sold in the domestic market must be tested, registered, and carry labels in Spanish. Both enforcement of and compliance with the law are irregular. If fully enforced, the requirement could restrict and/or delay the entry of an estimated \$43 million of U.S. exports due to the time required to test and register products.

### **GOVERNMENT PROCUREMENT**

Under the government procurement law, all government purchases over \$161,000 must be submitted for public competitive bidding of no less than five bidders. Foreign suppliers must meet pre-qualification requirements and submit bids through locally-established representatives. Exceptions exist only when a project is considered to be so urgent as to be declared a national emergency, in which case the government can forego the bidding process and may acquire the goods or services from local firms or through direct importation. The U.S. Embassy is unaware of any discrimination against products of U.S. origin, which generally enjoy good success in the government procurement market.

### **LACK OF INTELLECTUAL PROPERTY PROTECTION**

Although Guatemala is making some efforts to modernize its IPR regime, its protection of intellectual property remains inadequate. Legislation enabling accession to the Paris Convention is pending in the Congress, accession to the Berne Convention is awaiting presidential signature, and Guatemala expects to complete the process of approving the Central American Convention on Industrial Property later this year.

### **Copyrights**

A new copyright law has been pending since 1994. Current Guatemalan law does not expressly protect computer software. A 1992 law authorized a federal regulatory entity to enforce the international IPR obligations of local cable television operators. To date, however, no implementing action has been taken and the entity has not been established. In 1994, on the basis of agreements between Guatemalan cable television operators and the Motion Picture Exporters Association of America (MPEAA), the MPEAA

withdrew its Generalized System of Preferences (GSP) petition alleging persistent copyright infringement and piracy of satellite signals. In October 1995, citing violations of those agreements by cable companies, the MPA (successor to the MPEAA) voided the 1994 agreements and instructed cable operators to cease transmission of MPA member companies signals. A number of cable companies ignored the demand and continued pirating the signals while they sought to reopen negotiations with the signal providers.

A report prepared in 1995 by the International Intellectual Property Alliance estimated that losses in Guatemala due to copyright infringements cost U.S. firms \$9.7 million annually.

### **Patents**

Guatemala's patent law is out of date and deficient in several areas, including limits on protection to only fifteen years (ten years for food, beverages, medicines, and agrochemicals), broad compulsory licensing provisions, and lack of protection against parallel imports. A number of subject areas are not patentable, including mathematical methods, living organisms, commercial plans, and chemical compounds or compositions. Under the WTO Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPs), Guatemala was required to establish a patent "mailbox" for pharmaceutical and agricultural chemical products by January 1, 1995, but has not done so. In addition, Guatemala does not provide exclusive marketing rights for pharmaceutical and agricultural products, which are subject to "mailbox" applications, as required by the TRIPs Agreement.

### **Trademarks**

Guatemala's law provides insufficient protection for owners of well-known trademarks, since the right to exclusive use is granted to the first to file. This has permitted third parties to register and use (or prevent the genuine trademark holder from using) internationally-well-known trademarks. Sales of falsified name-brand clothing and other merchandise are common in Guatemala. Guatemala is a signatory of the 1994 revision of the Central American Convention for the Protection of Industrial Property. If the convention comes into force and is ratified by Guatemala, some of these deficiencies should be overcome. In January 1996, however, the Guatemalan Congress voted against ratification of the Convention. The Government of Guatemala has indicated it will resubmit the protocol to the legislature in 1997.

### **SERVICES BARRIERS**

Majority foreign ownership in telecommunications services is not permitted. However, professional services, such as legal and medical services, may be offered by anyone who has passed the Guatemalan licensing exams and has properly incorporated. The major U.S. public accounting firms have affiliates in Guatemala.

### **INVESTMENT BARRIERS**

Guatemala generally welcomes foreign investment, although the complex and often confusing welter of laws and regulations can be discouraging. Legislation designed to assure national treatment, clarify investment rules, and speed registration was adopted in 1995, but has yet to be implemented. Restrictions

## **Guatemala**

on foreign investment remain in several sectors of the economy, including public utilities, auditing, insurance, mineral exploitation, forestry, and the media. In response to the need for additional investment in telecommunications and electricity supply, in late 1996 the government adopted legislation liberalizing ownership, access controls, and demonopolizing these sectors.

In February 1997, representatives of the Guatemalan State Railroad and Piliductos Del Pacifico, the Guatemalan subsidiary of the New Orleans-based engineering firm Waldemar Nelson International, resolved a long-standing contract dispute, signaling the Government of Guatemala's interest in developing an improved investment climate.