

# GUATEMALA

## TRADE SUMMARY

The U.S. trade deficit with Guatemala was \$758 million in 2002, an increase of \$39 million from \$719 million in 2001. U.S. goods exports in 2002 were \$2.0 billion, up 9.2 percent from the previous year. Corresponding U.S. imports from Guatemala were \$2.8 billion, up 8.2 percent. Guatemala is currently the 40th largest export market for U.S. goods.

The stock of U.S. foreign direct investment (FDI) in Guatemala in 2001 was \$477 million, down from \$907 million in 2000. U.S. FDI in Guatemala is primarily in the manufacturing and finance sectors.

## IMPORT POLICIES

Guatemala's tariffs on most goods from outside the Central American Common Market are currently within the zero to 15 percent range, though there are exceptions of up to 23 percent in the area of footwear and textile products. The average applied rate is approximately 7 percent. Other exceptions include agricultural commodity imports in excess of any applicable tariff rate quota (TRQ).

Guatemala eliminated its annual tariff-rate quota (TRQ) and the use of reference prices to calculate tariffs for poultry parts in 2001, and began using invoice prices. Nevertheless, both procedures could be changed without prior notice, as they are not based in legislation approved by Congress.

The Government of Guatemala committed to implement the WTO Customs Valuation Agreement by November 2001. That deadline was not met as Guatemala lacked national customs valuation legislation. The Government of Guatemala drafted an imported merchandise valuation bill in 2002, which is now pending Congressional approval. In the interim, U.S. exporters of watches and telecommunications products have reported problems with arbitrary and unclear valuation procedures. In December 2001, the WTO Committee on Customs Valuation granted Guatemala's request to retain the use of minimum import values on certain poultry, rice, used clothing, and used motor vehicle products. Minimum values are permitted until May 21, 2003, for rice products, and until November 21, 2004, for used clothing and used vehicle products.

## 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. The law requires that every size or form of product sold be registered separately, even if the product content is of identical composition. Trained personnel available to carry out this process are in short supply. The registration and testing process takes six weeks regardless of the company or product. Products are sometimes damaged during the process and are susceptible to pilferage while awaiting completion of tests and registration. Enforcement of product registration and labeling requirements has been irregular but is becoming more consistent.

## GOVERNMENT PROCUREMENT

The Government Procurement Law requires most government purchases over \$115,000 to be submitted for public competitive bidding. Contracts can be awarded when there is only one bidder. The government often declares certain projects a matter of national emergency, thereby avoiding the competitive bidding process. Agencies exempt from standard procurement practices received more than 5 percent of the overall budget in 2002. Foreign suppliers no longer need to meet pre-qualification requirements, though it is sometimes required of their local counterparts. Bids must be submitted 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. Significant corruption in the public procurement process exists and is a barrier to entry for U.S. companies.

## INTELLECTUAL PROPERTY RIGHTS (IPR) PROTECTION

Guatemala passed and implemented greatly improved IPR legislation in November 2002. However, Guatemala's legislative framework was seriously weakened by a December 2002 law that suspended the processing of pharmaceutical and chemical patents until 2005, and removed protection for research data used to register those products.

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### Patents

Guatemala's 2000 Industrial Property Law made some improvements to the protection afforded to patent holders, including by increasing the term of protection for a patent 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. 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.

### Copyrights

Piracy of copyrighted material, including videos and software, remains widespread. Some progress has been achieved, however, in reducing the incidence of pay television piracy and in concluding valid licensing agreements with copyright holders. Guatemala has ratified the WIPO Copyright Treaty (WCT) and the WIPO Performances and Phonograms Treaty (WPPT).

### Trademarks

Exclusive rights for 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 Internet domain name registrar does not accept applications for well-known and famous names as frequently as before. 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.

### SERVICES BARRIERS

International telephone traffic must be routed through the facilities of an enterprise licensed by the Guatemalan Superintendency of Telecommunications. U.S. companies have raised allegations of anticompetitive behavior, including unilateral changes of interconnection rates by the country's dominant fixed line telephone service provider, Telgua. Guatemala's courts have ruled against Telgua in those cases where a verdict was reached, but the anticompetitive practices

generally continue.

Foreign banks are not permitted to open branches in Guatemala, though they may establish local subsidiaries subject to the conditions of the Monetary Board, including capital and lending requirements.

Guatemalan law forbids the operation of foreign insurance companies or companies offering services reserved for professionals with locally recognized academic credentials. Professionals such as engineers, lawyers, accountants, architects, and physicians must have graduated from a recognized university and must be registered in a professional association. Guatemala's association of lawyers has denied U.S. citizens who are graduates of local law schools the right to offer notary services based on their nationality. Guatemala's National University can validate foreign degrees but often requires additional course work or examinations.

### 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.

### OTHER BARRIERS

#### Corruption

Significant official corruption at the highest levels, security concerns and an anti-business attitude by the current administration are additional problems that have weakened investors' confidence and affected investment and trade decisions related to Guatemala.