GUATEMALA

TRADE SUMMARY

U.S. goods exports in 2013 were $5.5 billion, down 3.9 percent from the previous year. Corresponding U.S. imports from Guatemala were $4.2 billion, down 7.2 percent. The U.S. goods trade surplus with Guatemala was $1.4 billion in 2013, a decrease of $96 million from 2012. Guatemala is currently the 41st largest export market for U.S. goods.

The stock of U.S. foreign direct investment (FDI) in Guatemala was $1.1 billion in 2012 (latest data available), the same as 2011.

Free Trade Agreement

The Dominican Republic-Central America-United States Free Trade Agreement (CAFTA-DR or Agreement) entered into force for the United States, El Salvador, Guatemala, Honduras, and Nicaragua in 2006 and for the Dominican Republic in 2007. The CAFTA-DR entered into force for Costa Rica in 2009. The CAFTA-DR significantly liberalizes trade in goods and services as well as includes important disciplines relating to customs administration and trade facilitation; technical barriers to trade; government procurement; investment; telecommunications; electronic commerce; intellectual property rights; transparency; and labor and environment.

IMPORT POLICIES

Tariffs

As a member of the Central American Common Market, Guatemala applies a harmonized external tariff on most items at a maximum of 15 percent with some exceptions.

Under the CAFTA-DR, however, 100 percent of U.S. consumer and industrial goods will enter Guatemala duty free by 2015. Nearly all textile and apparel goods that meet the Agreement's rules of origin now enter Guatemala duty free and quota free, promoting new opportunities for U.S. and regional fiber, yarn, fabric, and apparel manufacturing companies.

Under the CAFTA-DR, more than half of U.S. agricultural exports now enter Guatemala duty free. Guatemala will eliminate its remaining tariffs on virtually all U.S. agricultural products by 2020 (2023 for rice and chicken leg quarters and 2025 for dairy products). For certain products, tariff-rate quotas (TRQs) permit some duty-free access for specified quantities during the tariff phase-out period, with the duty-free amount expanding during that period. Guatemala will liberalize trade in white corn through continual expansion of a TRQ, rather than by the reduction of the out-of-quota tariff.

Nontariff Measures

Under the CAFTA-DR, all CAFTA-DR countries, including Guatemala, committed to improve transparency and efficiency in administering customs procedures. The CAFTA-DR countries also committed to ensuring greater procedural certainty and fairness in the administration of these procedures, and agreed to share information to combat illegal trans-shipment of goods.

Guatemala's denial of claims for preferential treatment for U.S. products under the CAFTA-DR continues to be an occasional source of difficulty in exporting to Guatemala. U.S. companies have raised concerns that the Guatemalan Customs Administration (part of the Superintendence of Tax Administration, or SAT), as well as the Food Safety office in the Ministry of Agriculture and the Food Control Office in the Ministry of Health, have not provided adequate advance notice regarding administrative changes in documentation requirements for imported shipments, such as information required for certifications of origin or certificates of free sale. The United States has raised this issue with the Customs Administration (and other Guatemalan governmental units) and received assurances that future changes would be communicated in advance; Customs information is available on the tax and customs website: http://portal.sat.gob.gt/sitio/.

Stakeholders report that Guatemalan customs authorities are challenging declared tariff classifications, many of which are simple products for which the tariff classifications should not be confusing, and trying to reclassify the products into HS codes that are subject to a higher tariff. These practices raise concerns that the Customs Administration appears to be denying U.S. products the preferential treatment under the CAFTA-DR and instead imposing tariffs and other retroactive charges as a means of increasing revenue. The United States will continue to raise these concerns with Guatemala.

In early 2012, the Guatemalan government also approved a new law that modified customs procedures. Importers of U.S. products U.S. companies raised concerns that the customs law created problems and delays for the importation of goods. Due to these complaints, the Guatemalan Congress approved a revised customs law in October 2013. It is not yet clear if, when implemented, the new law will address concerns expressed with the 2012 law. The United States will continue to monitor the progress of the new customs law to address any possible trade obstacles.

GOVERNMENT PROCUREMENT

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

In 2009, the Guatemalan Congress approved reforms to the Government Procurement Law, which simplified bidding procedures, eliminated the fee previously charged to suppliers for bidding documents, and provided an additional opportunity for suppliers to raise objections to the bidding process. Foreign suppliers must submit their bids through locally-registered representatives, a process that can place foreign bidders at a competitive disadvantage.

Some U.S. companies have complained that the procurement process is not transparent, particularly highlighting instances in which a Guatemalan government entity subject to CAFTA-DR obligations makes a direct purchase without issuing a tender or when a CAFTA-DR covered entity does not provide the required minimum 40 days from the notice of procurement for interested parties to prepare and submit bids. There has also been a growing number of complaints from U.S. stakeholders and companies regarding an increasing tendency by some government entities to undertake major procurements through unusual special-purpose mechanisms, such as on an emergency basis, enabling the procuring entity to make a direct purchase from a pre-selected supplier and avoid competitive bidding through the public tender process, or structuring the requirements of the tender in such as a way so as to favor a particular foreign company.

Guatemala is not a signatory to the WTO Agreement on Government Procurement**.**

EXPORT SUBSIDIES

Under the CAFTA-DR, Guatemala may not adopt new duty waivers or expand existing duty waivers that are conditioned on the fulfillment of a performance requirement (*e.g.*, the export of a given level or percentage of goods). However, the CAFTA-DR permitted Guatemala to maintain such measures through December 31, 2009, provided that it maintained the measures in accordance with its obligations under the WTO Agreement on Subsidies and Countervailing Measures. The U.S. Government is working with the Guatemalan government to ensure compliance with its CAFTA-DR obligations.

Guatemala provides tax exemptions to investors in free trade zones and maintains duty drawback programs aimed mainly at garment manufacturing and assembly operations or "*maquiladoras*" (firms that are permitted to operate outside a free trade zone and still receive tax and duty benefits). The "Law for the Promotion and Development of Export Activities and Drawback" provides tax and duty benefits to companies that import over half of their production inputs/components and export their completed products. Investors are granted a 10-year exemption from both income taxes and the Solidarity Tax, which is Guatemala's temporary alternative minimum tax. Additionally, companies are granted an exemption from the payment of tariffs and value-added taxes on imported machinery, and a one-year suspension (extendable to a second year) of the same tariffs and taxes on imports of production inputs and packing material. Taxes are waived when the goods are re-exported.

INTELLECTUAL PROPERTY RIGHTS PROTECTION

Guatemala remained on the Watch List in the 2013 Special 301 Report. The United States expressed optimism about the coordination of IPR enforcement efforts in Guatemala, but noted that enforcement efforts weakened in 2012 and that overall prosecutions were significantly down comparable to 2011. The report recognized the 2011 enactment of legislation to strengthen penalties against the production and distribution of counterfeit medications, but highlighted that the United States was not aware of any successful prosecutions under that law in 2012. The severe lack of resources for the IPR prosecutor's office, trademark squatting, and Guatemalan government use of unlicensed software were noted as significant areas of concern. The report also highlighted the need for Guatemala to continue its enforcement efforts against manufacturers of pirated and counterfeit goods and to take steps to improve the operation of its judicial system to prosecute IPR violations. The United States engaged extensively with Guatemala as it prepared legislative amendments governing protections for geographical indications, in anticipation of action on applications received in 2013 from the European Union to register a range of GIs in Guatemala. During that ongoing engagement, the United States has stressed the need for use of CAFTA-DR consistent protections and processes, including providing public notice and an opportunity for opposition and cancellation, and transparency and impartiality in decision making.

The United States will continue to monitor Guatemala's implementation of its IPR obligations under the CAFTA-DR.

SERVICES BARRIERS

Some professional services may only be supplied by professionals with locally recognized academic credentials. Public notaries must be Guatemalan nationals. At least one U.S. citizen has complained that such restrictions prevent him from practicing that profession in Guatemala even though he has met all of the professional requirements. Foreign enterprises may provide licensed professional services in Guatemala only through a contract or other relationship with an enterprise established in Guatemala.

INVESTMENT BARRIERS

Some U.S. companies operating in Guatemala have complained that complex and unclear laws and regulations continue to constitute practical barriers to investment. Resolution of business and investment disputes through Guatemala's judicial system is also extremely time-consuming, and civil cases can take many years to resolve. Government institutions including the judicial system can be prone to third-party influence, which interferes with the due process of law and disadvantages U.S. companies on business dispute litigation.

Two U.S. companies operating in Guatemala filed claims under the Investment Chapter of the CAFTA-DR against the government of Guatemala with the Centre for the Settlement of Investment Disputes (ICSID) in 2007 and 2010. An ICSID tribunal issued its ruling on the first case brought by the Railroad Development Corporation in June 2012 and found that the Guatemalan government had breached the minimum standard of treatment obligation under Article 10.5 of the CAFTA-DR when it declared a railway equipment contract that it had previously negotiated with the investor to be contrary to the interests of the State. The ICSID awarded the investor $14.6 million in compensation. The Guatemalan government paid the full amount awarded by the ICSID tribunal to the company in November 2013. In December 2013, an ICSID tribunal issued an award finding in the second investment case brought by Teco Guatemala Holdings LLC finding that the Guatemalan government had breached the minimum standard of treatment obligation under Article 10.5 of the CAFTA-DR when it repudiated specific assurances it had previously provided to the company regarding the methodology that would be used to calculate and revise electricity tariffs in the country. The tribunal awarded that investor $21.1 million in damages and ordered Guatemala to pay an additional $7.52 million to cover costs and fees the investor incurred in prosecuting its claim.

Delays and uncertainty in obtaining licenses from relevant Guatemalan authorities for exploration and operation in extractive industries has the effect of inhibiting current and potential investments from U.S. firms.

The United States continues to engage with Guatemala to ensure fair and transparent treatment for U.S. companies in commercial and investment-related cases, consistent with CAFTA-DR provisions.

OTHER BARRIERS

Many U.S. firms and citizens have found corruption in the government, including in the judiciary, to be a significant concern and a constraint to successful investment and access to government procurement tenders in Guatemala. Administrative and judicial decision-making appear at times to be inconsistent, nontransparent, and very time-consuming.