# GUATEMALA

## TRADE SUMMARY

U.S. goods exports in 2014 were $6.1 billion, up 9.0 percent from the previous year. Guatemala is currently the 41st largest export market for U.S. goods. Corresponding U.S. imports from Guatemala were $4.2 billion, up 1.1 percent. The U.S. goods trade surplus with Guatemala was $1.8 billion in 2014, an increase of $455 million from 2013.

### 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, for the Dominican Republic in 2007, and for Costa Rica in 2009. The CAFTA-DR significantly liberalizes trade in goods and services and 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.

## TECHNICAL BARRIERS TO TRADE / SANITARY AND PHYTOSANITARY BARRIERS

### Sanitary and Phytosanitary Barriers

Guatemalan sanitary and phytosanitary import requirements change frequently, often without prior WTO notification. As a result, U.S. agricultural exports are sometimes detained at port until a final permit or waiver is issued.

Guatemala fumigates more than 90 percent of U.S. agricultural products entering Guatemala. In fact, even though U.S. grain exports are fumigated while en route, almost all U.S. grain that entered Guatemala in 2013 and 2014 was re-fumigated in Guatemala. Guatemala’s extensive fumigation of U.S. agricultural products results from the failure of the Guatemalan Ministry of Agriculture (MAGA) to publish an official quarantine pest list. The absence of such a list leads to arbitrary fumigation of shipments by Guatemalan authorities. These extra fumigations increase the cost of U.S. agricultural exports to Guatemala. Use of the fees generated by the fumigations, by the Regional Inspection Agency, and MAGA, is not transparent. The United States has engaged with Guatemala regarding fumigation issues.

In July 2014, MAGA implemented a regulation that requires exporters to pay for MAGA officials to inspect processing and storage facilities in the country of origin or country of export. The regulation applies to exporters of all fresh animal and vegetative food (including seafood products) imported by Guatemala. MAGA did not notify the new system through the WTO and has not responded to inquiries by the United States regarding the new regulation. The United States will continue to raise this issue with Guatemala.

## 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 enter Guatemala duty free as of 2015. Nearly all textile and apparel goods that meet the Agreement's rules of origin also enter Guatemala duty free and quota free, promoting new opportunities for U.S. and regional fiber, yarn, fabric, and apparel manufacturing companies.

In addition, more than half of U.S. agricultural exports enter Guatemala duty free under the CAFTA-DR. 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

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, as well as the Food Safety Office in MAGA 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/.

The Ministry of Health's Food Control Office in Guatemala began enforcing the requirement for "consularization" of Certificates of Free Sale in July 2013. This requirement applies with respect to processed food products that need to be registered every five years in Guatemala. U.S. products are denied registration in Guatemala if the Certificate of Free Sale is not "consularized" at a Guatemalan Consular office in the United States. This "consularization" requirement raises concerns in light of market access commitments under the CAFTA-DR.

In addition, stakeholders report that Guatemalan customs authorities occasionally challenge declared tariff classifications, including for products for which the tariff classifications should be straightforward, and attempt to reclassify the products so that they are subject to a higher tariff. These practices raise concerns that the Customs Administration might 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.

## 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 anticorruption 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.

Recent reforms of Guatemala's Government Procurement Law 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, 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 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 preselected supplier and avoid competitive bidding through the public tender process, structuring the requirements of the tender in such as a way so as to favor a particular foreign company, or nontransparent or inconsistent decisions. The United States will continue to monitor Guatemala's government procurement practices, and to raise concerns as appropriate, to ensure they are applied consistent with CAFTA-DR obligations.

Guatemala is not a signatory to the WTO Agreements 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 currently employs an export incentive program in the "Law for the Promotion and Development of Export Activities and Drawback." Guatemala provides tax exemptions 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 2014 Special 301 Report, in large part because pirated and counterfeit goods, including counterfeit and substandard medicines, continue to be widely available in Guatemala. Enforcement efforts are hampered by limited resources and the need for better coordination among all enforcement agencies. Trademark squatting, government use of unlicensed software, and the operation of Guatemala's judicial system were also noted as significant areas of concern. In addition, certain recent rulings by Guatemalan administrative authorities granting requests to register Geographical Indications (GIs) have caused concern, because in some cases they may effectively preclude U.S. exporters from using what appear to be generic or common terms when identifying their goods in Guatemala's market.

In late 2014, the Guatemalan Congress reversed positive steps taken toward fulfilling Guatemala's CAFTA-DR obligation to join the International Convention for the Protection of New Varieties of Plants (UPOV Convention). It is unclear if the Guatemalan Congress will work on the creation of a new UPOV implementing bill to comply with this obligation. The United States will continue to engage Guatemala on these and other concerns, including through the Special 301 process and will continue to monitor Guatemala's implementation of its IPR obligations under the CAFTA-DR.

## SERVICES BARRIERS

### Professional Services

Some professional services may only be supplied by professionals with locally recognized academic credentials. Public notaries must be Guatemalan nationals. Foreign enterprises may provide licensed professional services in Guatemala only through a contract or other relationship with an enterprise established in Guatemala.

### Telecommunications

In April 2014, the Guatemalan Congress approved a new telecommunications law to strengthen the country's data transmission infrastructure. Some stakeholders have raised concerns that the conditions imposed appear to discriminate against small and new suppliers. The Constitutional Court provisionally suspended some provisions of the law in June 2014 as a result of challenges to certain parts of the law but has not issued a final ruling as of December 2014 and the Guatemalan Telecommunications regulatory authority is currently implementing the provisions in the law that have not been suspended.

## INVESTMENT BARRIERS

Some U.S. companies operating in Guatemala have raised concerns that complex and unclear laws and regulations constitute practical barriers to investment. Resolution of business and investment disputes through Guatemala's judicial system is extremely time-consuming, and civil cases can take many years to resolve. Administrative and judicial decision making appear at times to be inconsistent, nontransparent, and very time-consuming. In addition, government institutions in Guatemala can be prone to third-party influence. U.S. firms and citizens have found corruption in the government, including in the judiciary, to be a significant concern and a constraint to investment.

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.