GUATEMALA

TRADE SUMMARY

The U.S. goods trade surplus with Guatemala was $1.0 billion in 2007, an increase of $635 million from $409 million in 2006. U.S. goods exports in 2007 were $4.1 billion, up 16.1 percent from the previous year. U.S. imports from Guatemala were $3.0 billion, down 2.3 percent over the corresponding period. Guatemala is currently the 41st largest export market for U.S. goods.

The stock of U.S. foreign direct investment in Guatemala was $347 million in 2006 (latest data available), up from $303 million in 2005.

IMPORT POLICIES

Free Trade Agreement

On August 5, 2004, the United States signed the Dominican Republic-United States-Central America Free Trade Agreement (CAFTA-DR or Agreement) with five Central American countries (Costa Rica, El Salvador, Guatemala, Honduras, and Nicaragua) and the Dominican Republic.

During 2006, the Agreement entered into force for the United States, El Salvador, Guatemala, Honduras, and Nicaragua. The CAFTA-DR entered into force for the Dominican Republic on March 1, 2007. Costa Rica approved the CAFTA-DR through a national referendum on October 7, 2007, but the Agreement has not entered into force for Costa Rica as it has not yet completed the process of adopting implementing legislation and regulations.

In 2007, the Parties agreed to amend several textile related provisions of the CAFTA-DR, including, in particular, changing the rules of origin to require the use of U.S. or regional pocket bag fabric in originating apparel. The textile amendments have not entered into force.

Under the Agreement, the Parties agree to remove barriers to trade and investment in the region, which will strengthen regional economic integration. The CAFTA-DR also 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 environmental protection.

Tariffs

As a member of the Central American Common Market (CACM), Guatemala agreed in 1995 to reduce its common external tariff to a maximum of 15 percent.

Under the CAFTA-DR, about 80 percent of U.S. industrial and consumer goods now enter Guatemala duty free, with the remaining tariffs phased out over 10 years, starting in 2006. Nearly all textile and apparel goods that meet the Agreement's rules of origin now enter 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 nearly all agricultural products within 15 years (18 years for rice and chicken leg quarters and 20 years for dairy products). For certain products, tariff-rate quotas (TRQs) will permit some immediate 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 a gradual expansion of a TRQ which will provide for an aggregate increase of 35 percent by the end of 2025. Guatemala's imports of corn consist mainly of yellow corn, over 90 percent of which comes from the United States.

Guatemala and the other Parties agreed to improve transparency and efficiency in administering customs procedures, including the CAFTA-DR rules of origin. Parties must also provide consistent and fair application of these procedures, and all the CAFTA-DR countries must share information to combat illegal transshipment of goods. The Foreign Trade Administration Office at the Ministry of Economy administers the CAFTA-DR TRQs, including compliance with timing, volumes, and procedures. Such information is publicly available on the Ministry's website.

STANDARDS, TESTING, LABELING, AND CERTIFICATION

During the CAFTA-DR negotiations, the governments created an intergovernmental working group to discuss SPS barriers to agricultural trade. The objective was to use the impetus of the market access negotiations to seek changes to the Central American countries' SPS regimes. Through the work of this group, Guatemala has committed to resolving specific measures that may affect U.S. exports to Guatemala. In addition, in connection with the CAFTA-DR, Guatemala agreed to recognize the equivalence of the U.S. food safety and inspection systems for meat and poultry, thereby eliminating the need for plant-by-plant inspections. Guatemala was the first country in the world to re-open its market to U.S. live animals after the 2002 discovery of a Bovine Spongiform Encephalopathy infected cow in the United States. Guatemala is now introducing U.S.-bred livestock to improve its meat and dairy industries. However, Guatemala continues to have restrictions on importation of those U.S. live cattle over 30 months of age.

Guatemala and the other Central American countries are in the process of developing common import standards for several products, including distilled spirits, which may facilitate trade

GOVERNMENT PROCUREMENT

Guatemala's Government Procurement Law requires most government purchases over 900,000 quetzals (approximately $117,800) to be submitted for public competitive bidding. Foreign suppliers must submit their bids through locally registered representatives, a process that can place foreign bidders at a competitive disadvantage.

Since 2004, Guatemalan government entities have been required to use Guatecompras, an Internet based electronic procurement system; this has improved transparency in the government procurement process. However, some government institutions use other systems of public procurement, such as when they receive funding from an international organization or NGO and use those institutions' procurement and auditing systems.

Under the CAFTA-DR, procuring entities must use fair and transparent procurement procedures, including advance notice of purchases and timely and effective bid review procedures, for procurement covered by the Agreement. Under the CAFTA-DR, U.S. suppliers are permitted to bid on most Guatemalan government procurement, including purchases by government ministries and state owned enterprises, 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 trade related matters, including in government procurement, is treated as a criminal offense, or is subject to comparable penalties.

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

EXPORT SUBSIDIES

Under the CAFTA-DR, Guatemala is not permitted to adopt new duty waivers or expand existing duty waivers that are conditioned on the fulfillment of a performance requirement (*e.g.*, the exportation of a given level or percentage of goods). However, under the CAFTA-DR, Guatemala is permitted to maintain such measures through 2009, provided that it maintains the measures in accordance with its obligations under the WTO Agreement on Subsidies and Countervailing Measures.

INTELLECTUAL PROPERTY RIGHTS (IPR) PROTECTION

In May 2006, Guatemala strengthened its legal framework for the protection of IPR with the passage of laws in preparation for the entry into force of the CAFTA-DR. The CAFTA-DR provides for improved standards for the protection and enforcement of a broad range of IPR, which are consistent with U.S. and international standards of protection and enforcement as well as with emerging international standards. Such improvements include state-of-the-art protections for digital copyrighted products such as U.S. software, music, text and videos; stronger protection for U.S. patents and trademarks; and further deterrence of piracy and counterfeiting. However, enforcement of these provisions has yet to become fully effective and U.S. copyrights continue to be infringed, for example for business software. The CAFTA-DR also requires Guatemala to protect undisclosed test data submitted for the purpose of product marketing approval of pharmaceutical and agricultural chemical products against disclosure and unfair commercial use. In May 2007, Guatemala suspended consideration of a rule that would conflict with these provisions.

SERVICES BARRIERS

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 through a contract or other relationship with an enterprise established in Guatemala. Under the CAFTA-DR, U.S. insurance companies may establish wholly owned subsidiaries and joint ventures, and will be able to establish as a branch in 2009. The Guatemalan Congress is considering an insurance law that would strengthen supervision of the insurance sector and allow foreign insurance companies to open branches in Guatemala in 2008, a year earlier than required by the CAFTA-DR. U.S. insurance suppliers may provide cross-border insurance in areas such as marine, aviation and transportation, goods in international transit and the brokerage for these products, and reinsurance. Services auxiliary to insurance such as claims settlement, actuarial, risk assessment, and consulting also may be provided on a cross-border basis.

Guatemala has agreed to ensure reasonable and nondiscriminatory access to essential telecommunications facilities and to ensure that major suppliers provide interconnection at cost oriented rates. U.S. companies have raised allegations of anticompetitive behavior, including unilateral changes of interconnection rates and suspension of service by the country’s major fixed line telephone service provider, Telgua, a subsidiary of America Movil (owned by Telmex of

Mexico). In one case involving a U.S. owned company, Guatemala's courts ordered Telgua to reconnect circuits that it had unilaterally disconnected, but Telgua ignored the court order and the Guatemala telecommunications regulator – the Superintendency of Communications – has not forced Telgua to comply with the court order. The license issued to another U.S. owned telecommunications operator in Guatemala is being challenged by Telgua. USTR continues to work with the Guatemalan government to guarantee compliance with its obligations to ensure access to the major supplier's network.

INVESTMENT BARRIERS

The CAFTA-DR establishes a more secure and predictable legal framework for U.S. investors operating in Guatemala. Under the CAFTA-DR, all forms of investment are protected, including enterprises, debt, concessions, contract, and IP. U.S. investors enjoy, in almost all circumstances, the right to establish, acquire, and operate investments in Guatemala on an equal footing with local investors. Among the rights afforded to U.S. investors are due process protections and the right to receive a fair market value for property in the event of an expropriation. Investor rights are protected under the CAFTA-DR by an impartial procedure for dispute settlement that is fully transparent and open to the public. Submissions to dispute panels and dispute panel hearings will be open to the public, and interested parties will have the opportunity to submit their views. Some U.S. companies complain that complex and unclear laws and regulations continue to constitute practical barriers to investment.

In June 2007, a U.S. company operating in Guatemala filed a claim under Chapter 10 of the CAFTA-DR against the government of Guatemala with the International Centre for Settlement of Investment Disputes (ICSID). The claimant alleges the government of Guatemala has indirectly expropriated the company's assets by negating a contract and has requested $65 million in compensation and damages from the Guatemalan Government. The claim is pending before the ICSID.

ELECTRONIC COMMERCE

The CAFTA-DR includes provisions on electronic commerce that reflect its importance to global trade. Under the CAFTA-DR, Guatemala has committed to provide nondiscriminatory treatment to U.S. digital products and not to impose customs duties on digital products transmitted electronically. Guatemala has proposed legislation that would: provide legal recognition to communications and contracts that are executed electronically; permit electronic communications to be accepted as evidence in all administrative, legal, and private actions; and allow for the use of electronic signatures. The legislation is pending in the Guatemalan Congress.