GUATEMALA

TRADE SUMMARY

The U.S. goods trade surplus with Guatemala was $1.3 billion in 2008, an increase of $232 million from $1.0 billion in 2007. U.S. goods exports in 2008 were $4.7 billion, up 16.1 percent from the previous year. Corresponding U.S. imports from Guatemala were $3.5 billion, up 14.0 percent from the previous year. Guatemala is currently the 42nd largest export market for U.S. goods.

The stock of U.S. foreign direct investment (FDI) in Guatemala was $530 million in 2007 (latest data available), up from $437 million in 2006.

IMPORT POLICIES

Free Trade Agreement

On August 5, 2004, the United States signed the Dominican Republic-Central America-United States Free Trade Agreement (CAFTA-DR or Agreement) with five Central American countries (Costa Rica, El Salvador, Guatemala, Honduras, and Nicaragua) and the Dominican Republic (the Parties). Under the Agreement, the Parties are significantly liberalizing trade in goods and services. 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.

The Agreement entered into force for the United States, El Salvador, Guatemala, Honduras, and Nicaragua in 2006. The CAFTA-DR entered into force for the Dominican Republic on March 1, 2007, and for Costa Rica on January 1, 2009.

In 2008, the Parties implemented amendments to 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 Parties also implemented a reciprocal textile inputs sourcing rule with Mexico. Under this rule, Mexico provides duty-free treatment on certain apparel goods produced in a Central American country or the Dominican Republic with U.S. inputs, and the United States provides reciprocal duty-free treatment under the CAFTA-DR on certain apparel goods produced in a Central American country or the Dominican Republic with Mexican inputs. These changes will further strengthen and integrate regional textile and apparel manufacturing and create new economic opportunities in the United States and the region.

Tariffs

As a member of the Central American Common Market, 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 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 nearly all 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 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 expansion of a TRQ, rather than by tariff reductions. 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 (http://www.mineco.gob.gt).

Nontariff Measures

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

U.S. companies have raised concerns that the Guatemalan Customs office has not provided adequate advance notice regarding administrative changes in documentation requirements for imported shipments, such as information submitted on certificates of origin.

STANDARDS, TESTING, LABELING, AND CERTIFICATION

Guatemala and the other four Central American Parties to the CAFTA-DR are in the process of developing common standards for the importation of several products, including distilled spirits, which may facilitate trade.

Sanitary and Phytosanitary Measures

During the CAFTA-DR negotiations, the governments created an intergovernmental working group to discuss sanitary and phytosanitary barriers to agricultural trade. Through the work of this group, Guatemala has committed to resolving specific measures that may affect U.S. exports to Guatemala. For example, Guatemala now recognizes the equivalence of the U.S. food safety and inspection systems for beef, pork, and poultry, thereby eliminating the need for plant-by-plant inspections of U.S. producers.

Guatemala closed its market to U.S. cattle and beef and beef products following the 2003 discovery of a Bovine Spongiform Encephalopathy positive animal in the United States. However, in April 2006, Guatemala re-opened its market to U.S. live animals less than 30 months of age and in October 2008 Guatemala fully opened its market to all U.S. beef and beef products from animals of any age consistent with the guidelines of the International Organization for Animal Health. Guatemala continues to restrict imports of U.S. live cattle over 30 months of age.

Guatemala and the other four Central American Parties to the CAFTA-DR notified to the WTO a set of microbiological criteria for all raw and processed food products imported into any of these countries. The United States has some concerns with these criteria and in May 2008 submitted comments to the five countries. The Central American countries are currently evaluating possible amendments to the proposed criteria.

GOVERNMENT PROCUREMENT

Guatemala's Government Procurement Law requires most government purchases over 900,000 quetzals (approximately $110,974 as of March 2009) 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 continue to use parallel systems of public procurement, such as spending through international organizations or NGOs, to avoid some government procurement regulations and public auditing.

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 matters affecting trade and investment, 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

Guatemala maintains tax exemptions provided to investors in free trade zones and duty drawback programs. 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, 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

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, as well as with emerging international standards of protection and enforcement of IPR. Such improvements include: state-of-the-art protections for patents, trademarks, undisclosed test and other data submitted to obtain marketing approval for pharmaceuticals and agricultural chemicals, and digital copyrighted products such as software, music, text, and videos; 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, such as with respect to business software.

In 2008, the Guatemalan Congress considered requiring a registration process for generic molecules of agricultural chemical products, which includes provisions concerning the protection of undisclosed test data for such products. The U.S. Government will continue to monitor developments regarding these registration processes

SERVICES BARRIERS

Under the CAFTA-DR, Guatemala granted U.S. services suppliers substantial access to its services market, including financial services.

Some professional services may only be supplied in Guatemala 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 allowed to establish branches by December 31, 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. This law would also require foreign insurance companies to fully capitalize in Guatemala. 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 a Mexican firm. One case involving a U.S.-owned company was resolved through direct negotiation between the parties; however, concerns remain over the ability of the Guatemalan telecommunications regulator – the Superintendence of Telecommunications – to ensure that major suppliers provide interconnection at cost-oriented rates as required in the CAFTA-DR. The United States continues to work with the Guatemalan government to ensure compliance with its obligations under the CAFTA-DR.

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, contracts, and intellectual property. 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. Resolution of business and investment disputes through Guatemala's judicial system is extremely time-consuming, and civil cases can take many years to resolve. Corruption, intimidation and the ineffectiveness of the judiciary have led to confusing and contradictory decisions and frequent delays. U.S. companies, however, face the same conditions as local companies and are not subject to any pattern of discrimination in the legal system.

In June 2007, a U.S. company operating in Guatemala filed a claim under the investment chapter 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.

In January 2009, a U.S. company operating in Guatemala submitted a Notice of Intent to the government of Guatemala to file for international arbitration under the investment chapter of the CAFTA-DR. The company is seeking to resolve a dispute with the government of Guatemala regarding the regulation of electricity rates.

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. In August 2008, the Guatemalan Congress approved an electronic commerce law that provides legal recognition to communications and contracts that are executed electronically; permits electronic communications to be accepted as evidence in all administrative, legal, and private actions; and allows for the use of electronic signatures.