GUATEMALA

TRADE SUMMARY

The U.S. trade deficit with Guatemala was $672 million in 2003, a decrease of $80 million from 2002. U.S. goods exports in 2003 were $2.3 billion, up 11.2 percent from the previous year. Corresponding U.S. imports from Guatemala were $2.9 billion, up 5.3 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 2002 was $391 million, up 0.5 percent from 200l.

IMPORT POLICIES

Free Trade Agreement

The United States and four Central American countries (El Salvador, Guatemala, Honduras, and Nicaragua) concluded negotiations on the U.S.-Central American Free Trade Agreement (CAFTA) in December 2003. The United States and Costa Rica on January 25 finalized Costa Rica's participation in the CAFTA. The United States and the Dominican Republic concluded market access negotiations in March 2004 to integrate the Dominican Republic into the CAFTA.

The CAFTA will not only liberalize bilateral trade between the United States and the region, but will also further integration efforts among the countries of Central America, removing barriers to trade and investment in the region by U.S. companies. The CAFTA will also require the countries of Central America to undertake needed reforms to alleviate many of the systemic problems noted below in areas including customs administration; protection of intellectual property rights; services, investment, and financial services market access and protection; government procurements; sanitary and phytosanitary (SPS) barriers; other non-tariff barriers; and other areas.

Tariffs

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 21 percent and 40 percent in the areas of footwear and alcoholic beverages. The average applied rate is approximately 5 percent to 6 percent. Other exceptions include agricultural commodity imports in excess of any applicable tariff rate quota (TRQ). Once CAFTA goes into effect, about 80 percent of U.S. industrial and commercial goods will enter Guatemala duty free, with the remaining tariffs being eliminated within ten years.

The CAFTA will eliminate tariffs on virtually all agricultural products within a maximum of fifteen years (dairy in 20 years and rice and poultry in 18). Textiles and apparel will be duty-free and quota-free immediately if they meet the Agreement's rule of origin, promoting new opportunities for U.S. and Central American fiber, yarn, fabric and apparel manufacturing. The Agreement requires transparency and efficiency in administering customs procedures, including the CAFTA rules of origin. Under the CAFTA, Guatemala commits to ensure procedural certainty and fairness and all parties agree to share information to combat illegal transshipment of goods.

Non-tariff Barriers

The government of Guatemala committed to implement the WTO Customs Valuation Agreement by November 2001. However, in December 2001, the WTO Committee on Customs Valuation granted Guatemala's request to retain the use of minimum import values for used clothing and used vehicle products until November 21, 2004. Once the CAFTA is implemented, Guatemala will have to abide by the agreement's transparent customs valuations provisions.

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. Enforcement of product registration and labeling requirements has been inconsistent but is improving.

Under the CAFTA, Guatemala agreed to apply the science-based disciplines of the WTO Agreement on SPS measures, and will move toward recognizing export eligibility for all plants inspected under the U.S. food safety and inspection system. Through the work of this group, additional commitments to resolve specific unjustified measures restricting trade between Guatemala and the United States have also been agreed. When the United States and Central America launched the CAFTA negotiations, they initiated an active working group dialogue on SPS barriers to agricultural trade that met alongside the negotiations to facilitate market access. The objective was to leverage the impetus of active trade negotiations to seek difficult changes to the countries' SPS regimes. The SPS Working Group remains committed to continue working on resolution of outstanding issues even after the negotiations concluded.

GOVERNMENT PROCUREMENT

Guatemala is not a party to the WTO Government Procurement Agreement. Currently, Guatemala's Government Procurement Law requires most government purchases over $113,000 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. 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 that can place foreign bidders at a competitive disadvantage. Additionally, U.S. companies have alleged that significant corruption exists in the public procurement process and is a barrier to entry.

Under the CAFTA, Guatemala will grant U.S. suppliers non-discriminatory rights to bid on contracts from most Central American government entities, including key ministries and state-owned enterprises. The CAFTA requires fair and transparent procurement procedures, such as advance notice of purchases and timely and effective bid review procedures. The CAFTA anti-corruption provisions ensure that bribery in trade-related matters, including in government procurement, is specified as a criminal offense under Central American and U.S. laws.

INTELLECTUAL PROPERTY RIGHTS (IPR) PROTECTION

Although Guatemala passed and implemented greatly improved IPR legislation in November 2000, the legislative framework was seriously weakened by a November 2002 law that suspended the processing of pharmaceutical and chemical patents until 2005, and removed protection for test data submitted to obtain market approval for those products. A series of legislative initiatives and court challenges seeking to eliminate data protection provisions of the law have also ensued. Effective enforcement of existing laws remains a problem.

However, the CAFTA provisions will strengthen Guatemala's IPR protection regime to conform with, and in many areas exceed, WTO norms and will criminalize end-user piracy, providing a strong deterrence against piracy and counterfeiting. The CAFTA will require Guatemala to authorize the seizure, forfeiture, and destruction of counterfeit and pirated goods and the equipment used to produce them. It will also mandate both statutory and actual damages for copyright infringement and trademark piracy. This serves as a deterrent against piracy, and ensures that monetary damages can be awarded even when it is difficult to assign a monetary value to the violation.

Patents

Guatemala's 2000 Industrial Property Law also made improvements to the protection afforded to patent holders, including by increasing the term of protection for a patent to 20 years from the date of filing the patent application. It increased the number of products and services that are considered patentable, including living organisms, commercial plans and chemical compounds or compositions. 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. U.S. pharmaceutical firms have been concerned about the constitutional challenges to the current laws. However, the CAFTA obligations will strengthen protection of test data and trade secrets submitted to a government for the purpose of product approval by requiring that they be protected against unfair commercial use for a period of 5 years for pharmaceuticals and 10 years for agricultural chemicals.

Copyrights

Piracy of copyrighted material, including videos and software, remains widespread. Some progress has been achieved 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). CAFTA enforcement provisions are designed to help reduce copyright piracy.

Trademarks

Exclusive rights for trademarks are granted on a first-to-file basis, thus permitting third parties to register and gain exclusive use of well-known or famous 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 from applicants who are not the trademark holders as frequently as it once did. 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. CAFTA enforcement provisions are designed to help reduce trademark piracy.

SERVICES BARRIERS

Currently, 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 anti-competitive behavior, including unilateral changes of interconnection rates, by the country's dominant fixed line telephone service provider, Telgua, which is a subsidiary of Telmex of Mexico. Guatemala's courts have ruled against Telgua in those cases where a verdict was reached, but the anti-competitive practices continue. The CAFTA will require that Guatemala further open its telecommunications market to competition on a nondiscriminatory basis.

Foreign banks are currently 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 based exclusively on the balance sheet of the local subsidiary. The CAFTA provisions will make it easier for U.S. banks to enter the Guatemalan market. U.S. banks will have full rights to establish subsidiaries, joint ventures or branches.

Guatemalan law forbids the operation of foreign insurance companies or the supply by foreigners or foreign companies of many professional services reserved for professionals with locally recognized academic credentials Many professionals must have graduated from a recognized university and must be registered in a professional association. Notary publics must be Guatemalan nationals. Guatemala's National University can validate foreign degrees but often requires additional course work or examinations. Under the CAFTA, as with banks, U.S. financial service suppliers would have full rights to establish subsidiaries, joint ventures or branches for insurance companies. The right to provide professional services will be granted on a reciprocal basis depending on the requirements in individual U.S. states.

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. When the CAFTA is implemented, the agreement will establish a secure, predictable legal framework for U.S. investors operating in Guatemala. Under the CAFTA, all forms of investment will be protected, including enterprises, debt, concessions, contracts and intellectual property. U.S. investors will 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 will be backed by an effective, impartial procedure for dispute settlement that is fully transparent. Submissions to dispute panels and panel hearings will be open to the public, and interested parties will have the opportunity to submit their views.

OTHER SIGNIFICANT BARRIERS

Corruption

Past allegations of official corruption, security concerns and an anti-business attitude under the previous administration (there was a change in administration in January 2004) may have weakened investors' confidence and affected investment and trade decisions related to Guatemala. Anti-corruption provisions in the CAFTA aim to help alleviate these problems in many areas related to trade and investment, including making it a criminal offense to bribe a public official in any manner related to trade.