GUATEMALA
INVESTMENT CLIMATE STATEMENT
2015

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Executive Summary

Guatemala has the largest economy in Central America, with a USD 58.7 billion gross domestic product (GDP) in 2014, and an anticipated 4.1 percent growth rate expected in 2015. Remittances, mostly from the United States, increased by 8.6 percent in 2014 and were equivalent to 9.4 percent of GDP. The United States is Guatemala's most important economic partner. The Guatemalan government (GoG) continues to enhance competitiveness, promote investment opportunities, and work on legislative reforms aimed at supporting economic growth. More than 200 U.S. and other foreign firms have active investments in Guatemala, benefitting from the U.S. Dominican Republic-Central America Free Trade Agreement (CAFTA-DR). Foreign direct investment (FDI) stock was USD 12.1 billion in 2014, an 18 percent increase in relation to 2013. FDI is predominately in mining and energy infrastructure, and in the agricultural sector.

Despite positive steps to improve Guatemala's investment climate, international companies choosing to invest in Guatemala face significant challenges. Complex and confusing laws and regulations, inconsistent judicial decisions, bureaucratic impediments, and corruption continue to constitute practical barriers to investment. Under CAFTA-DR obligations, the United States has raised concerns with the GoG regarding its enforcement of both its labor and environmental laws.

In March 2015, the Presidents of Guatemala, El Salvador, and Honduras, and Vice President Biden signed a Joint Statement of Commitments to implement specifics of the Northern Triangle's Plan for the Alliance for Prosperity. They agreed to promote strategic areas of interest such as: energizing the productive sectors of the economy; creating economic opportunities; developing human capital, citizen security, and social inclusion; improving public safety and enhancing access to the legal system; and strengthening institutions to increase trust in the state.

On April 8, 2015, a grant agreement between the Millennium Challenge Corporation (MCC) and the GoG was signed for a USD 28 million, three-year Threshold Program with Guatemala to provide quality educational opportunities and support GoG revenue mobilization reforms, both of which will address binding constraints to economic growth.

Since 2006, the UN-sponsored International Commission against Impunity in Guatemala (CICIG) has undertaken numerous high-profile official corruption investigations, leading to significant indictments. CICIG has gained the endorsement of the private sector for its recent work against graft in the Customs and Tax Offices.

Guatemala will hold national elections September 6 2015 and a run-off in the presidential race, should no candidate receive more than 50 percent of the vote, is scheduled October 25. We expect elections to be free and fair. The political situation in Guatemala is tense following a number of government corruption scandals and calls for widespread reform that started in April and promises a heated election cycle. Historically there have been limited cases of campaign violence centered on local elections and we expect that will continue in 2015. The change of administration will occur on January 14, 2016.

1. Openness To, and Restrictions Upon, Foreign Investment

Attitude toward Foreign Direct Investment

Guatemalan's Central Bank (Banguat) is projecting a five percent increase in FDI for 2015. The agriculture, mining, and quarrying sectors, according to Banguat, were the principal drivers for attracting FDI in 2013 and 2014. The 2015 Heritage Economic Freedom Index gave Guatemala a score of 60.4 out of 186, down 0.8 points from 2014, reflecting declines in property rights, business freedom, and trade freedom that are partially offset by improvements in labor freedom, the management of government spending, and freedom from corruption. Guatemala scored 32 points out of 100 on Transparency International's 2014 Corruption Perception Index, ranking it 115 out of 175 countries. Guatemala improved its rating in the Organization for Economic Cooperation and Development (OECD) Country Risk Classification from category 5 to 4, on a 7 point scale. It was one of only five countries in the world that received an improved rating. The new classification allows access to international financing at lower interest rates and thus helps to reduce the cost of social and private investment to generate additional jobs. The World Bank's Doing Business 2015 ranked Guatemala 73 out of 189 countries, falling two spots from the 2014 report. The three areas where the country improved the most were: paying taxes, starting a business, and access to electricity. Areas where challenges remain and where reforms are most needed are protecting minority investors, resolving insolvency, and enforcing contracts. Guatemala moved up eight spots in the World Economic Forum's Global Competitiveness Index, from 86 to 78, out of 144. Guatemala made the most improvement in infrastructure and macro-economic environment, but ranked at the bottom in organized crime and business costs associated with crime and violence.

Other Investment Policy Reviews

Guatemala has been a World Trade Organization (WTO) member since 1995. The GoG had their last WTO trade policy review (TRP) in 2009. In 2011, the United Nations Conference on Trade and Development (UNCTAD) conducted an investment policy review (IPR) on Guatemala. The WTO TPR noted that Guatemala lacked a general competition law and that increasing the level of competition was one of the most important pending tasks for the country's government policy. The UNCTAD IPR recommended to strengthen the public sector's institutional capacity and also highlighted that adopting a competition law and policy should be a priority of Guatemala's development agenda. Guatemala has not approved a competition law as of June 2015, but the GoG agreed to approve a competition law by November 2016 as part of its commitments under the Association Agreement with the European Union. Other important recommendations from the UNCTAD IPR were to further explore alternative dispute resolution mechanisms and the establishment of commercial and land courts.

Laws/Regulations of Foreign Direct Investment

More than 200 U.S. and hundreds of other foreign firms have active investments in Guatemala. Under 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. The U.S. Embassy in Guatemala places a high priority on improving the investment climate for U.S. investors. Guatemala passed a foreign investment law in 1998 to streamline and facilitate foreign investment. The GoG continues to work on legislative reforms aimed at supporting economic growth and closing regulatory loopholes that become barriers to investment. As part of the CAFTA-DR implementation process, the Guatemalan Congress approved a law that strengthened existing legislation on intellectual property rights (IPR) protection, government procurement, trade, insurance, arbitration, and telecommunications, as well as the penal code, to ensure compliance with CAFTA-DR. An e-commerce law was approved by Congress in August 2008, which 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.

The United States raised concerns with the GoG's adherence to its CAFTA-DR obligations with respect to the effective enforcement of both its labor and environmental laws. Regarding the labor law case, an arbitral panel was established, pursuant to CAFTA-DR procedures, to consider whether Guatemala is conforming to its obligations to effectively enforce its labor laws. Regarding the environmental case, the CAFTA-DR Secretariat for Environmental Matters was required to suspend its investigation in 2012 when the GoG provided evidence that the relevant facts of the case were under consideration by Guatemala's Constitutional Court. The court dismissed the case on procedural grounds in 2013.

Complex and confusing laws and regulations, inconsistent judicial decisions, bureaucratic impediments and corruption continue to constitute practical barriers to investment. Complicated tax regulations meant to reduce tax evasion result in foreign and domestic companies incurring high costs to comply with tax laws. The GoG has developed two websites that are useful to help navigate the laws, procedures and registration requirements for investors: https://minegocio.gt/, which facilitates on-line registration procedures for new businesses, and http://asisehace.gt/, which provides detailed information on laws and regulations and administrative procedures applicable to investment.

Industrial Promotion

Mining has historically been a sensitive social conflict issue in Guatemala, and operations in Guatemala have been subject to protests. Sub-surface minerals and petroleum are the property of the State, and the Ministry of Energy and Mines (MEM) is in charge of approving mining licenses. An initial exploration license is issued for three years, which can be extended for two additional two-year periods, if needed. After completing the exploration phase, a company may then apply for a separate exploitation license. Mining exploitation licenses are granted for twenty-five years and can be extended for an additional twenty-five years. On November 28, 2014, the Guatemalan Congress passed the 2015 national budget that would increase royalties to the GoG from one to 10 percent on most private mining operations. The 2015 budget would send nine percent of the royalty to the national coffers and one percent to local municipalities. The only exceptions to the new royalty hike are nickel and jade mining operations. Royalties for them will be capped at five and six percent, respectively. Private sector groups are challenging the legality of this change.

Petroleum contracts are granted through a public tender process. One contract is awarded covering both exploration and exploitation. This contract is granted for a period of twenty-five years and can be extended for an additional fifteen years. Contracts for petroleum extraction are typically granted through production-sharing agreements. Over the past several years, a number of U.S. companies have had significant investments in the mining and petroleum sectors put at risk, which required the approval of contracts or exploitation licenses by GoG regulatory bodies, in order to begin operations or to realize a return on their investments. Examples include a contract for one petroleum company that was signed in November 2014 after 28 revisions and 17 months of delays. Another investor received its approved license in April 2013, after more than a year of delays by MEM. A contract for another such company was approved in August 2013, after about two years of delays, despite having satisfied all legal requirements to move forward. The future of these investments is not guaranteed.

Limits on Foreign Control

There are no impediments to the formation of joint ventures or the purchase of local companies by foreign investors. The absence of a developed, liquid, and efficient capital market, in which shares of publicly-owned firms are traded, makes equity acquisitions in the open market difficult. Most foreign firms, therefore, operate through locally incorporated subsidiaries.

There are no restrictions on foreign investment in the telecommunications, electrical power generation, airline, or ground-transportation sectors. The Foreign Investment Law removed limitations to foreign ownership in domestic airlines and ground-transport companies in January 2004.

Foreign banks may open branches or subsidiaries in Guatemala subject to Guatemalan financial controls and regulations. These include a rule requiring local subsidiaries of foreign banks and financial institutions operating in Guatemala to meet Guatemalan capital and lending requirements as if they were stand-alone operations.

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 a Guatemalan company. In July 2010, the Guatemalan Congress approved a new insurance law, which allows foreign insurance companies to open branches in Guatemala, a requirement under CAFTA-DR. This law requires foreign insurance companies to fully capitalize in Guatemala.

Privatization Program

The GoG privatized a number of state-owned assets in industries and utilities in the late 1990s including power distribution, telephone services, and grain storage. Guatemala does not currently have a privatization program.

Screening of FDI

All firms are subject to certain basic requirements; foreign firms are subject to additional requirements. Domestic and foreign firms must publish their intent to conduct business, agree to

Guatemalan legal jurisdiction and register with the Ministry of Economy (MINECO) in order to incorporate formally in Guatemala. In addition to this, foreign firms are required to demonstrate solvency, deposit operating capital of GTQ 5,000 (about USD 645) in a local bank, establish a bond in favor of third parties for an amount of not less than USD 50,000, provide legalized financial statements, appoint a local representative and contractually agree to fulfill any pending legal obligation before permanently closing operations in Guatemala.

Competition Law

There is no law regulating monopolistic or anti-competitive practices, but the GoG agreed to approve a competition law by November 2016 as part of its commitments under the Association Agreement with the European Union.

Investment Trends

According to preliminary data from Banguat, FDI stock totaled USD 12.1 billion in 2014, an 18 percent increase in relation to 2013. Banguat data also show that the flow of FDI in 2014 was USD 1.4 billion, a 7.7 percent increase compared with 2013. Some of the activities that attracted most of the FDI flows in 2014 were energy, agriculture, mining, commerce, manufacturing, and banking.

Guatemala launched its first public-private partnership (PPP) tender December 2014, and the GoG will start including PPP in the country's capital investment totals in 2015, with the goal of drawing future investments.

Table 1

Measure	Year	Index or Rank	Website Address
TI Corruption Perceptions index	2014	115 of 175	**transparency.org/cpi2014/results**
World Bank's Doing Business Report "Ease of Doing Business"	2015	73 of 189	**doingbusiness.org/rankings**
Global Innovation Index	2014	93 of 143	**globalinnovationindex.org/content.aspx?page=data-analysis**
World Bank GNI per capita	2013	USD 3,340	**data.worldbank.org/indicator/NY.GNP.PCAP.CD**

Millennium Challenge Corporation Country Scorecard

The Millennium Challenge Corporation, a U.S. Government entity charged with delivering development grants to countries that have demonstrated a commitment to reform, produced scorecards for countries with a per capita gross national income (GNI) of USD 4,125 or less. A list of countries/economies with MCC scorecards and links to those scorecards is available here:

http://www.mcc.gov/pages/selection/scorecards. Details on each of the MCC's indicators and a guide to reading the scorecards are available here: http://www.mcc.gov/pages/docs/doc/report-guide-to-the-indicators-and-the-selection-process-fy-2015.

2. Conversion and Transfer Policies

Foreign Exchange

Guatemala's Foreign Investment Law and CAFTA-DR commitments protect the investor's right to remit profits and repatriate capital. There are no restrictions on converting or transferring funds associated with an investment into a freely usable currency at a market-clearing rate. U.S. dollars are freely available and easy to obtain within the Guatemalan banking system. In October 2010, monetary authorities approved a regulation to establish limits for cash transactions of foreign currency to reduce the risks of money laundering and terrorism financing. This regulation establishes that monthly deposits over USD 3,000 will be subject to additional requirements, including a sworn statement by the depositor stating that the money comes from legitimate activities. There are no legal constraints on the quantity of remittances or any other capital flows, and there have been no reports of unusual delays in the remittance of investment returns.

The Law of Free Negotiation of Currencies allows Guatemalan banks to offer different types of foreign-currency-denominated accounts. In practice, the U.S. dollar is used most frequently. Some banks offer "pay through" dollar-denominated accounts in which depositors make deposits and withdrawals at a local bank while the actual account is maintained on behalf of depositors in an offshore bank.

Capital can be transferred from Guatemala to any other jurisdiction without restriction. The exchange rate moves in response to market conditions. The government sets one exchange rate as reference which it applies only to its own transactions and which is based on the commercial rate. The Central Bank intervenes in the foreign exchange market only to prevent sharp movements.

Remittance Policies

Guatemala became a member of the Financial Action Task Force of South America (GAFISUD), in July 2013. It remains a member of the Caribbean Financial Action Task Force (CFATF).

3. Expropriation and Compensation

Guatemala's Constitution prohibits expropriation, except in cases of eminent domain, national interest, or social benefit. The Foreign Investment Law requires proper compensation in cases of expropriation. Investor rights are protected under 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 are open to the public, and interested parties have the opportunity to submit their views.

The GoG maintains the right to terminate a contract at any time during the life of the contract, if it determines the contract is contrary to the public welfare. It has rarely exercised this right and can only do so after providing the guarantees of due process.

In June 2007, a U.S. company operating in Guatemala filed a claim under the investment chapter of CAFTA-DR against the GoG with the International Centre for Settlement of Investment Disputes (ICSID Convention). The claimant alleged the GoG indirectly expropriated the company's assets through a breach of contract. The U.S company requested USD 65 million in compensation and damages from the GoG. The ICSID court issued its ruling on this case in June 2012 and stated that the GoG had in fact breached the minimum standard of treatment under Article 10.5 of CAFTA-DR and required the GoG to pay an award of USD 14.6 million. GoG paid this award in November 2013.

4. Dispute Settlement

Legal System, Specialized Courts, Judicial Independence, Judgments of Foreign Courts

Guatemala follows the civil law system. Codified Judicial Branch Law stipulates that jurisprudence or case law is also a source of law. The right to own private property is recognized within the Guatemalan Constitution. The law requires that all real property transactions must have their deeds registered in the local property registry to make them enforceable. Guatemala has a written and consistently-applied Commercial Code. Contracts in Guatemala are legally enforced when the owner of a property right that has been infringed files a lawsuit to enforce recognition of the infringed right or to receive compensation for the damage caused. The civil law system, allows for civil cases to be brought before, after, or concurrently with criminal claims. Guatemala does not have specialized courts to hear intellectual property rights (IPR) claims, but it does have a dedicated IPR prosecutor.

Bankruptcy

Guatemala's Code on Civil and Mercantile Legal Proceedings contains a specific chapter on bankruptcy proceedings. Under the code, creditors can request to be included in the list of creditors, request an insolvency proceeding when a debtor has suspended payments of liabilities to creditors, and constitute a general board of creditors to be informed of the proceedings against the debtor. According to the World Bank's 2015 Doing Business Report, one of the areas where reforms are most needed is the area of resolving insolvency where Guatemala ranked 155 out of 189 countries.

Investment Disputes

Over the past eight years (in 2007 and 2010), two investment disputes involving U.S. businesses were filed under the investment chapter of CAFTA-DR against the GoG with the. The status of both cases is described under the section entitled, International Arbitration.

International Arbitration

CAFTA-DR incorporated dispute resolution mechanisms for investors. The first claim under the agreement was filed in June 2007. In October 2010, a U.S. company operating in Guatemala filed the second claim against the GoG. The second claim, seeks to resolve a dispute against GoG regarding the regulation of electricity rates. In 2013, the arbitral tribunal issued its judgement and awarding the U.S. company over USD 21 million in damages and USD 7.5 million to cover legal expenses. In 2014, the GoG filed an appeal to have the 2013 award annulled. On the same day, the U.S company also filed for a partial annulment of the award. Both annulment proceedings remain pending before the ICSID.

Guatemala's domestic foreign investment law also allows alternative dispute mechanisms, if agreed to by the parties. Guatemala's Arbitration Law of 1995 uses the U.N. Commission on International Trade Law (UNCITRAL) Model Law as the bases for their rules on International Arbitration. The subsequent enforcement of arbitral awards is recognized under the convention on the Recognition and Enforcement of Foreign Arbitral Awards (1958 New York Convention) of which Guatemala is a signatory.

ICSID Convention and New York Convention

Guatemala is a signatory to convention on the Recognition and Enforcement of Arbitral Awards (1958 New York Convention), the Inter-American Convention on International Commercial Arbitration (Panama Convention), and a member state to the International Centre for Settlement of Investment Disputes (ICSID Convention).

Duration of Dispute Resolution

Resolution of business and investment disputes through Guatemala's judicial system is time-consuming, and can take years to resolve. Alleged corruption, intimidation, and ineffectiveness in the judiciary have contributed to inefficiency 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.

5. Performance Requirements and Investment Incentives

WTO/TRIMS

Guatemala's 1998 Foreign Investment Law eliminated trade-related investment restrictions and ensured Guatemala was compliant with World Trade Organization (WTO) obligations under the Agreement on Trade Related Investment Measures (TRIMS). In 1999, Guatemala notified the WTO that it was TRIMS compliant.

Investment Incentives

Investment incentives are specified in law and are available, with few exceptions, to both foreign and Guatemalan investors without discrimination. There are three main programs, two focused on exports and the other on reforestation.

The major Guatemalan incentive program, the Law for the Promotion and Development of Export Activities and Drawback, is aimed mainly at maquilas (manufacturing sector) which entails garments and assembly lines, where more than half of production are imported and the completed products are exported. Investors in this sector are granted a 10-year exemption from both income taxes and the Solidarity Tax, Guatemala's temporary alternative minimum tax. Additional incentives include an exemption from duties and value-added taxes (VAT) on imported machinery and a one-year suspension (extendable to a second year) of the same duties and taxes on imports of production inputs and packing material. Taxes are waived when the goods are re-exported. The Free Trade Zone Law provides similar incentives to those provided by the incentive program described above. Some of the tax incentives granted under the two major Guatemalan incentive programs fall under the WTO's definition of prohibited subsidies, which were scheduled to expire on December 31, 2007, with a phase out period of two years. However, in July 2007, the WTO adopted a decision that allowed the WTO Subsidies Committee to continue to grant annual extensions of the transition period of export subsidies to Guatemala and other countries until the end of 2013, with a final phase out period of two years. In order to comply with WTO commitments to dismantle prohibited subsidies, the GoG submitted the Promotion of Investment and Employment draft law to Congress in January 2013 to replace the incentives provided through the Law for the Promotion and Development of Export Activities and Drawback and the Free Trade Zones Law. This proposed law is pending legislative approval.

Property owners who engage in reforestation activities may qualify for government incentives through the National Institute of Forests (INAB). This incentive program (PINFOR) is scheduled to run through 2016.

Research and Development

Information not available

Performance Requirements

Guatemala does not impose performance, purchase, or export requirements, other than those normally associated with free trade zones and duty drawback programs. The Labor Code requires that at least 90 percent of employees must be Guatemalan, but the requirement does not apply to high-level positions such as managers and directors.

Data Storage

Companies are not required to locate operations in specific geographic areas or include local content in production.

6. Right to Private Ownership and Establishment

The right to hold private property and to engage in business activity is recognized in the Guatemalan Constitution. Foreign private entities can establish, acquire, and dispose freely of virtually any type of business interest, with the exception of some professional services as noted above in Section 1.5. The foreign investment law specifically notes that foreign investors enjoy the same rights of use, benefits, and ownership of property as afforded Guatemalans. Foreigners are prohibited, however, from owning land immediately adjacent to rivers, oceans, and international borders.

CAFTA-DR established a more secure and predictable legal framework for U.S. investors operating in Guatemala. Under 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.

There are no impediments to the formation of joint ventures or the purchase of local companies by foreign investors. The absence of developed, liquid, and efficient capital markets, in which shares of publicly-owned firms are traded, makes equity acquisitions in the open market difficult. Most foreign firms, therefore, operate through locally-incorporated subsidiaries.

7. Protection of Property Rights

Real Property

Guatemala follows the real property registry system. Defects in the titles and ownership gaps in the public record can lead to conflicting claims of land ownership. The government has stepped up its efforts to enforce property rights by providing helping to provide a clear property title; nevertheless when rightful ownership is in dispute, it can be difficult to obtain and subsequently enforce eviction notices.

Mortgages are available to finance homes and businesses, and about half of the banks offer mortgage loans with terms as long as 15-20 years for residential real estate. Mortgages and liens are recorded at the real estate property registry. According to the 2015 World Bank's Doing Business Report, registering property in Guatemala takes 24 days, and it costs 3.8 percent of the property value. In 2015, Guatemala ranked 65 out of 189 countries in the category of Registering Property.

The legal system is readily accessible to foreigners. Foreign investors are advised to seek reliable local counsel early in the investment process.

Intellectual Property Rights

Guatemala belongs to the WTO since 1995 and to the World Intellectual Property Organization (WIPO) since 1983.). It is also a signatory to the Paris Convention, Berne Convention, Rome Convention, Phonograms Convention, and the Nairobi Treaty. Guatemala has ratified the WIPO Copyright Treaty (WCT) and the WIPO Performances and Phonograms Treaty (WPPT). In June 2006, as part of CAFTA-DR implementation, Guatemala ratified the Patent Cooperation Treaty and the Budapest Treaty on the International Recognition of the Deposit of Microorganisms for the Purposes of Patent Procedure. Also in June 2006, the Guatemalan Congress approved the International Convention for the Protection of New Varieties of Plants (UPOV Convention); however, implementing legislation that would allow Guatemala to become a party to the convention remains pending.

Guatemala has a registry for intellectual property. Trademarks, copyrights, patents rights, industrial designs, and other forms of intellectual property must be registered in Guatemala to obtain protection in the country.

Guatemala has a sound IPR legal framework. The Guatemalan Congress passed an industrial property law in August 2000, bringing the country's intellectual property rights laws into compliance with the WTO's Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS) agreement. This legislation was modified in 2003 to provide pharmaceutical test data protection consistent with international practice, and, in 2005, the law was again amended to comply with IPR protection requirements in CAFTA-DR. CAFTA-DR provides for improved standards for the protection and enforcement of a broad range of IPR, which are consistent with U.S. standards of protection and enforcement as well as emerging international standards. A law to prohibit the production and sale of counterfeit medicine was approved by Congress in November 2011. It approved amendments to the Industrial Property Law in June 2013 to allow the registration of geographical indications (GI), as required under the Association Agreement with the European Union. Guatemalan administrative authorities issued rulings on applications to register GIs that appear sound and well-reasoned for compound GI names, but U.S. exporters are concerned that 2014 rulings on single-name GIs will effectively prohibit new U.S. exporters to the Guatemalan market from using what appear to be generic or common names when identifying their goods in Guatemala's market.

Enforcement of IPR laws has been inconsistent. A number of raids, cases, and prosecutions have been pursued; however, resource constraints and lack of coordinated government action impede efficient enforcement efforts. Piracy of works protected by copyright and infringement of other forms of intellectual property, such as trademarks, including those of some major U.S. food and pharmaceutical brands, remains problematic in Guatemala.

Guatemala has been included on the Watch List in USTR's Special 301 Report for more than ten years. The 2014 Special 301 Report noted the severe lack of resources for IPR prosecution efforts and highlighted trademark squatting and the GoG's use of unlicensed software as significant areas of concern. The IPR prosecutor's office tracks seizures of counterfeit goods as part of its prosecution work and reports to the judge in charge of a case the type and amounts of goods that have been seized. Guatemalan customs officers do not have ex-officio authority to seize and destroy counterfeit goods. Right holders or their representatives are required to confirm the authenticity of goods before seizures and to draft a declaration. Counterfeit goods seized during working hours are sent to judicial storage spaces paid by the government, but counterfeit goods seized outside of working hours are sent to a private storage spaces paid by the right holders.

For additional information about treaty obligations and points of contact at local IP offices, please see WIPO's country profiles at http://www.wipo.int/directory/en/.

Resources for Rights Holders

Contact at Mission:
Sue Kuester Economic Officer
(502) 2326-4202
GuatemalaPOL-ECON@state.gov

Country Resources:
Contact information for the American Chamber of Commerce in Guatemala can be found at: https://www.amchamguate.com/es/staff.

For information about a public list of local lawyers please see the U.S. Embassy website at: http://guatemala.usembassy.gov/acs_legal_information.html.

8. Transparency of the Regulatory System

Tax, labor, environment, health, and safety laws do not directly impede investment in Guatemala. Bureaucratic hurdles are common for both domestic and foreign companies, including lengthy processes to obtain permits and licenses and receive shipments. The legal and regulatory systems are confusing and not transparent. Regulations often contain few explicit criteria for government administrators, resulting in ambiguous requirements that are applied inconsistently by different government agencies and the courts. While there is no apparent systematic discrimination against foreign companies in these processes, these inconsistencies can favor local firms that are more familiar with these challenges.

Public participation in the promulgation of regulations is rare. Companies and individuals are able to submit comments to the issuing government office, but with limited effect. There is no consistent legislative oversight of administrative rule-making.

Laws that are being debated in Congress are placed on the institution’s public website; however, last-minute amendments often are not publicly disclosed before congressional decisions. Final versions of laws, once signed by the President, must be published in the official gazette before taking effect.

Guatemala is a member of UNCTAD's international network of transparent investment procedures, http://asisehace.gt/. Foreign and national investors may be able to find detailed information on administrative procedures applicable to investment and income generating operations, including the number of steps, name, and contact details of the entities and persons in charge of procedures, required documents, and conditions, costs, processing time, and legal bases justifying the procedures.

9. Efficient Capital Markets and Portfolio Investment

Guatemala's capital markets are weak and inefficient because they lack a securities regulator. The local stock exchange (Bolsa Nacional de Valores) deals almost exclusively in commercial paper, repurchase agreements (repos), and government bonds. A new capital markets law has been drafted by Banguat and the Superintendence of Banks (SIB). Notwithstanding the lack of a modern capital markets law, the government debt market has continued to develop. Domestic treasury bonds now represent 51.8 percent of total public debt.

Guatemala lacks a market for publicly-traded equities, the absence of which raises the cost of capital and complicates mergers and acquisitions. As of December 2014, borrowers faced a weighted average annual interest rate of 16.8 percent, with some banks charging over 30 percent on consumer or micro-credit loans. Foreigners rarely rely on the local credit market to finance investments.

Money and Banking System, Hostile Takeovers

Overall, the banking system remains stable. According to information from the SIB, Guatemala's 18 commercial banks had an estimated USD 31 billion in assets among them in 2014. The five largest banks control about 81.6 percent of total assets. In addition, there are 14 non-bank financial institutions, which perform primarily investment banking and medium and long-term lending, and two exchange houses.

In April 2002, the Guatemalan Congress passed a package of financial sector regulatory reforms that increased the regulatory and supervisory authority of the SIB, which is responsible for regulating the financial services industry. These reforms brought local practices more in line with international standards and spurred a round of bank consolidations and restructurings. The 2002 reforms required that non-performing assets held offshore be included in loan-loss-provision and capital-adequacy ratios. This forced a number of smaller banks to seek new capital, buyers, or mergers with stronger banks. As a result, the number of banks was reduced from 27 in 2005 to 18 in 2014.

The Guatemalan Congress has been actively working on new laws in the business and financial sectors. In August 2012, the Guatemalan Congress approved reforms to the Banking and Financial Groups Law and to the Central Bank Organic Law that strengthen supervision and prudential regulation of the financial sector and resolution mechanisms for failed or failing banks. In July 2010, the Guatemalan Congress approved a new insurance law, which strengthens supervision of the insurance sector and allows foreign insurance companies to open branches in Guatemala. Groups of affiliated credit card, insurance, financial, commercial banking, leasing, and related companies must issue consolidated financial statements prepared in accordance with uniform, generally accepted, accounting practices. The groups are audited and supervised on a consolidated basis.

10. Competition from State-Owned Enterprises

With the exception of the National Electricity Institute (INDE) and two state-owned ports, Guatemala does not have active SOEs in other industries. INDE is a state-owned electricity company responsible for expanding the provision of electricity to rural communities. INDE generates about 54 percent of the hydro-electric power produced in Guatemala, and it participates in the wholesale market under the same rules as its competitors. It also provides a subsidy for the first 100 kilowatt-hours (kWh) to consumers of less than 300 kWh per month. Its board of directors comprises representatives from the government, municipalities, business associations, and labor unions. The general manager is appointed by the board of directors.

The GoG owns 30 percent of the shares of Rural Development Bank (BanRural), the third largest bank in Guatemala, and it is allotted 3 out of 10 seats on its board of directors. BanRural is a mixed capital company and operates under the same laws and regulations as other commercial banks. The GoG also appoints the manager of GUATEL, the former state-owned telephone company dedicated to providing rural and government services that were split off from the fixed-line telephone company during its privatization in 1998. GUATEL's operations are small, and it continuously fails to generate sufficient revenue to cover expenses. The GUATEL director reports to the Guatemalan president and to the board of directors. GUATEL is required by law to publish annual reports.

OECD Guidelines on Corporate Governance of SOEs

Guatemala has signed on to the OECD guidelines, but they have not taken the necessary steps to adhere to the guidelines regarding Corporate Governance of State Owned Enterprises (SOEs).

Sovereign Wealth Funds

Information not available.

11. Corporate Social Responsibility

There is a general awareness of corporate social responsibility (CSR) on the part of producers and service providers, as well as Guatemalan business chambers. The American Chamber of Commerce in Guatemala (AmCham) and a local organization called the Center for Socially Responsible Corporate Action in Guatemala (CentraRSE) annually recognize companies for their CSR activities. In January 2014, a U.S. based company was recognized as one of twelve finalists for the Secretary of State's 2013 Award for Corporate Excellence for its contributions to sustainable development in Guatemala. U.S. companies such as McDonald's, Starbucks, and Denimatrix have been recognized by the State Department for their CSR programs that aim to foster a safe and productive workplace as well as provide health and education programs to aid workers, families and communities. Many international companies have found that CSR programs targeted to the local communities they serve, help to build trust and are generally expected by the communities, considering the low level of government funding to health, education, and infrastructure.

OECD Guidelines for Multinational Enterprises

Guatemala is a non-adhering country to the OECD Guidelines for Multinational Enterprises, but multinational enterprises from adhering countries operate in the country.

12. Political Violence

Guatemala has one of the highest violent crime rates in Latin America. According to Centro de Investigaciones Economicas Nacionales (CIEN), the murder rate in 2012 and 2013 was 34 per 100,000, making Guatemala one of the most dangerous countries in the world. Rule of law is lacking, and the judicial system is weak, overworked, and inefficient. The police are understaffed and often corrupt.

Given the weak rule of law, violent common crime is a major problem in Guatemala. Gangs are a constant concern in urban areas and gang members are often well-armed. Widespread narcotics and alien smuggling activities make some remote areas dangerous, especially along Guatemala's border with Mexico. Security, therefore, remains a widespread concern; however, foreigners are not usually singled out as targets of crime.

There have been recent examples of violence that resulted in extrajudicial killings, illegal detentions, and property damage as a result of investment projects. The main source of tension among indigenous communities, Guatemalan authorities, and private companies had been the lack of prior consultation. The UN's Office of the High Commissioner for Human Rights (OHCHR) reported an increase in conflicts over the exploitation of natural resources in indigenous areas between 2012 and 2014. In a handful of incidents the government's response has been the declaration of a state of emergency, limiting certain constitutional rights in the conflicted areas.

13. Corruption

Bribery is illegal under Guatemala's Penal Code; however, corruption remains a serious problem that companies may encounter at many levels. Guatemala scored 32 out of 100 points on Transparency International's 2014 Corruption Perception Index, ranking it 115 out of 175 countries, not a significant increase from the 2013 score of 29 points, ranking it 25th out of 31 countries in the region.

Investors have historically found corruption especially pervasive in customs transactions, particularly at ports and borders away from the capital. The Superintendence of Tax Administration (SAT) launched a customs modernization program in November 2006, which implemented an advanced electronic manifest system and removed many corrupt customs officials. However, reports of corruption at major customs locations such as ports and border points remain prevalent. The current and former Superintendents of Guatemala's Tax Administration Superintendency (SAT) were arrested in April 2015, on customs and tax fraud charges associated with contraband trafficking, along with at least 22 others.

Guatemala's Government Procurement Law requires most government purchases over USD 116,000 to be submitted for public competitive bidding. Since March 2004, GoG entities have been required to use Guatecompras, an Internet-based electronic procurement system to track GoG procurement processes. GoG entities must also comply with GoG procurement commitments under CAFTA-DR. There has also been a growing number of complaints from U.S. stakeholders and companies over government entities undertaking 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 a way so as to favor a particular foreign company. In August 2009, the Guatemalan Congress approved reforms to the Government Procurement Law, which simplified bidding procedures, eliminated the fee previously charged to receive bidding documents, and provided an additional opportunity for suppliers to raise objections over the bidding process. Despite these reforms, large government procurements are often subject to appeals and injunctions based on claims of irregularities in the bidding process (e.g., documentation issues and lack of transparency). Guatemala is not part of the WTO Agreement on Government Procurement (AGP). The U.S. government continues to advocate for the use of open, fair, and transparent tenders in government procurement and in accordance with CAFTA-DR obligations, which would allow open participation by U.S. companies.

UN Anticorruption Convention, OECD Convention on Combatting Bribery

Guatemala ratified the U.N. Convention against Corruption in November 2006, and the Inter-American Convention against Corruption in July 2001, but has not implemented all of the latter document's provisions, such as criminalizing illicit enrichment. In October 2012, the Guatemalan Congress approved an anti-corruption law that increases penalties for existing crimes and adds new crimes such as illicit enrichment, trafficking in influence, and illegal charging of commissions. Guatemala is not a party to the OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions.

Resources to Report Corruption

Public Ministry
Address: 10a Calle 10-14 Zona 1, Ciudad de Guatemala
Phone: (502) 2230-5561; (502) 2230-5569; (502) 2230-5577 (502) 2230-5591; (502) 2230-5593
Email address: fiscaliacontracorrupcion@mp.gob.gt

Comptroller General's Office
Address: 7a Avenida 7-32 Zona 13
Phone: (502) 2417-8700

Contact at "watchdog" organization
Name: Accion Ciudadana (Guatemalan Chapter of Transparency International)
Address: Avenida Reforma 12-01 Zona 10, Edificio Reforma Montufar, Nivel 17, Oficina 1701
Phone: (502) 2388- 3400
Toll free to submit corruption complaints: 1-801-8111-011
Email address: alac@accionciudadana.org.gt; accionciudadana@accionciudadana.org

14. Bilateral Investment Agreements

In 2004, the United States, the Dominican Republic, Guatemala, Costa Rica, El Salvador, Honduras and Nicaragua signed the Central America Free Trade Agreement CAFTA-DR. The agreement entered into force in Guatemala on July 1, 2006. CAFTA-DR contains a chapter on investments.

Guatemala has bilateral investment agreements with Argentina, Austria, Belgium, Cuba, Chile, Finland, France, Germany, Israel, Italy, South Korea, Spain, Sweden, Switzerland, Taiwan, the Czech Republic, and The Netherlands, and it is currently negotiating a bilateral investment agreement with Kuwait.

In addition to CAFTA-DR, Guatemala has signed bilateral or regional free trade agreements with Chile, the European Union, Peru, Mexico, Colombia, Taiwan, and Panama, and concluded negotiations of a free trade agreement with the European Free Trade Association (EFTA) countries in October 2014. Guatemala has also signed partial-scope agreements with Belize, Cuba, Ecuador, Trinidad and Tobago, and Venezuela, which cover a reduced number of products and do not include chapters beyond trade.

Bilateral Taxation Treaties

The United States and Guatemala do not have a bilateral taxation agreement.

15. OPIC and Other Investment Insurance Programs

Guatemala ratified the Multilateral Investment Guarantee Agency (MIGA) Convention in 1996. The Overseas Private Investment Corporation (OPIC) is active in Guatemala, providing both insurance and investment financing. OPIC applicants have generally been able to quickly obtain foreign government approval (FGA). For more information, U.S. investors should contact OPIC headquarters in Washington, D.C., at (202) 336-8799, or go to www.opic.gov.

According to Banguat, the reference exchange rate of Quetzals (GTQ) to the U.S. dollar (USD) remained relatively stable during 2014, with a high of 7.88 and a low of 7.59.

16. Labor

An estimated 1.8 million individuals in the formal sector workforce are augmented by about 4.1 million more who work in the informal sector, including some who are too young for formal sector employment. In rural areas, in particular, child labor remains a serious problem in certain industries, according to the 2014 Survey on Employment and Income. About 32 percent of the total labor force is engaged in agricultural work. The availability of a large, unskilled, and inexpensive labor force has led many employers, such as construction and agricultural firms, to use labor-intensive production methods. About 17 percent of the employed workforce is illiterate. In developed urban areas, however, education levels are much higher, and a workforce with the skills necessary to staff a growing service sector has emerged. Even so, highly capable technical and managerial workers remain in short supply, with secondary and tertiary education focused on social science careers.
No special laws or exemptions from regular labor laws are provided for the export processing zones. The GoG approved in December 2014 a lower minimum wage for workers employed by light manufacturing export companies in four of 338 municipalities of the country, with the intention of attracting foreign investment and creating jobs in those areas. The Constitutional Court provisionally suspended the differentiated minimum wage in January 2015 and a final Constitutional Court ruling is pending. The Labor Code requires that at least 90 percent of employees must be Guatemalan, but the requirement does not apply to high level positions, such

as managers, of Guatemalan companies who must be either Guatemalan citizens or resident aliens with work permits. Employer responsibilities regarding working conditions, especially health and safety standards, benefits, severance pay, premium pay for overtime work, minimum wages, and bonuses are specified in the Labor Code. Mandatory benefits, bonuses, and employer contributions to the social security system can add up to about 55 percent of an employee's base pay. Many workers, however, especially in the agricultural sector, do not receive the full compensation package mandated in the labor law. The Constitution guarantees the right of workers to unionize and to strike, and commits the State to support and to protect collective bargaining, as well as to respect international labor conventions. A combination of inadequate allocation of budget resources to the Ministry of Labor (MINTRAB) and other relevant state institutions, and inefficient administrative and justice sector processes, act as significant impediments for more effective enforcement of labor laws to protect these workers' rights. As a result, investigating, prosecuting, and punishing employers who violate these guarantees remain a challenge.

In 2010, a U.S. interagency delegation engaged in formal consultations, under Chapter 16 of CAFTA-DR, with the GoG regarding its apparent systematic failure to investigate alleged labor law violations, take enforcement action once labor law violations have been identified, and enforce labor court orders in cases of labor violations. An arbitral panel was established to consider whether Guatemala is conforming to its CAFTA-DR obligations to enforce effectively its labor laws. In April 2013, after lengthy negotiations, the United States and Guatemala agreed to an ambitious and comprehensive labor Enforcement Plan that includes significant, concrete actions that the GoG agreed to implement within specified time frames to improve enforcement of labor laws. The arbitral panel was suspended during the Enforcement Plan's implementation period. The U.S. Government asked to reconvene the arbitral panel in September 2014, and the case is currently under arbitration. The rate of unionization in Guatemala is very low.

17. Foreign Trade Zones/Free Ports/Trade Facilitation

Decree 65-89, Guatemala's Free Trade Zones Law, permits the establishment of free trade zones (FTZs) in any region of the country. Developers of private FTZs must obtain authorization from the MINECO to install and manage a FTZ. Businesses operating within authorized FTZs also require authorization from the MINECO. Investment incentives are specified in law and are available to both foreign and Guatemalan investors, without discrimination. As of December 2014, 17 of 25 authorized FTZs were operational. Commercial activities and apparel assembly operations are the main beneficiaries of Guatemala's free trade and maquiladora (manufacturing) laws.

18. Foreign Direct Investment and Foreign Portfolio Investment Statistics

Guatemala has the largest economy in Central America, reaching a USD 58.7 billion gross domestic product (GDP) in 2014, with a 4.1 percent growth rate expected in 2015. Remittances, mostly from the United States, increased by 8.6 percent in 2014 and were equivalent to 9.4 percent of GDP. The United States is Guatemala's most important economic partner. According to preliminary Banguat data, FDI stock was USD 12.1 billion in 2014, an 18 percent increase in relation to 2013. Foreign portfolio investment totaled USD 3.07 billion in 2014, with about 62 percent invested in government bonds. There is no official data available on sources of stock of FDI or foreign portfolio investment.

Table 2: Key Macroeconomic Data, U.S. FDI in Host Country/Economy

	Host Country Statistical source*		**USG or international statistical source**		**USG or International Source of Data: BEA; IMF; Eurostat; UNCTAD, Other**
Economic Data	**Year**	**Amount**	**Year**	**Amount**	
Host Country Gross Domestic Product (GDP) ($M USD)	2013	53,852	2013	53,797	www.worldbank.org/en/country
Foreign Direct Investment	**Host Country Statistical source***		**USG or international statistical source**		**USG or international Source of data: BEA; IMF; Eurostat; UNCTAD, Other**
U.S. FDI in partner country ($M USD, stock positions)	N/A	N/A	2013	1,103	http://bea.gov/international/factsheet/factsheet.cfm?Area=210
Host country's FDI in the United States ($M USD, stock positions)	N/A	N/A	2013	-20	http://bea.gov/international/factsheet/factsheet.cfm?Area=210
Total inbound stock of FDI as % host GDP	2014	19%			

*Bank of Guatemala http://www.banguat.gob.gt

Table 3: Sources and Destination of FDI

According to data from the Coordinated Investment Survey for 2013 published by the IMF, about one fifth of FDI in Guatemala comes from the United States. Other important sources of FDI are Canada and Mexico (please see Table 3 on sources and destinations of FDI below). Preliminary data from Banguat also shows that the flow of FDI totaled USD 1.4 billion in 2014 (2.38 percent of GDP), a 7.7 percent increase compared to USD 1.3 billion (2.4 percent of GDP) received in 2013.

Direct Investment from/in Counterpart Economy Data					
From Top Five Sources/To Top Five Destinations *(US Dollars, Millions)*					
Inward Direct Investment			**Outward Direct Investment**		
Total Inward	10,258	100%	Total Outward	472	100%
United States	2,087	20%	Panama	114	24%
Canada	1,317	13%	Bahamas, The	104	22%
Mexico	1,212	12%	Barbados	102	22%
Colombia	921	9%	El Salvador	63	13%
Switzerland	675	7%	Puerto Rico	29	6%
"0" reflects amounts rounded to +/- USD 500,000.					

Source: IMF Coordinated Direct Investment Survey

Table 4: Sources of Portfolio Investment

Portfolio investment data are not available for Guatemala.

19. Contact for More Information

- U.S. Embassy Guatemala
- Economic Section
- (502) 2326-4202
- GuatemalaPOL-ECON@state.gov