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# PARTNERSHIP FOR TRADE FACILITATION: GUATEMALA NEEDS ASSESSMENT

## BUSINESS ENVIRONMENTS FOR AGILE MARKETS (BEAM)

**June 2012**

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### DISCLAIMER

The authors' views expressed in this publication do not necessarily reflect the views of the United States Agency for International Development or the United States Government.

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# LIST OF ABBREVIATIONS

AEO	Authorized Economic Operator
AR	Advanced Rulings
BEAM	Business Environments for Agile Markets
CAFTA-DR	US-Dominican Republic-Central American Free Trade Agreement
CAUCA	Central American Unified Customs Code Version IV
COMIECO	Consejo de Ministros de Economía de Centroamérica (Council of Central American Ministers of the Economy)
COMRIEDRE	Consejo de Ministros Responsables de la Integración Económica y Desarrollo Regional (Council of Ministers Responsible for Economic Integration and Regional Development)
CONAPEX	Comisión Nacional de Promoción de Exportaciones (Export Promotion Commission)
EU	European Union
FUNDESA	Fundación para el Desarrollo de Guatemala
GATT	General Agreement on Tariffs and Trade
GDP	Gross Domestic Product
GOG	Government of Guatemala
IDB	Inter-American Development Bank
MAGA	Ministerio de Agricultura y Ganadería (Ministry of Agriculture and Livestock)
MINECO	Ministerio de Economía (Ministry of the Economy)
MOF	Ministerio de Finanzas Públicas (Ministry of Finance)
MSPAS	Ministerio de Salud Pública y Asistencia Social (Ministry of Public Health and Social Welfare)
OCA	Other Control Authorities active at border points
OECD	Organization for Economic Cooperation and Development
PRONACOM	Programa Nacional de Competitividad (National Competitiveness Program)
PTF	Partnership for Trade Facilitation

RECAUCA	Regulations of the Central American Unified Customs Code Version IV
SAT	Superintendencia de Administración Tributaria (Tax Administration)
SIECA	Secretaría de Integración Económica Centroamericana (Secretariat for Central American Economic Integration)
SPS	Sanitary and Phytosanitary
US	United States
USAID	United States Agency for International Development
USG	United States Government
WB	World Bank
WCO	World Customs Organization
WTO	World Trade Organization

# EXECUTIVE SUMMARY

The USAID BEAM assessment came at an interesting time for Guatemala. The Guatemalan Congress had just issued Decree 10-2012 on March 5, 2012 containing a package of tax reform laws, including a new National Customs Law. Guatemala had lacked a Customs Law and was in bad need of a regulating instrument that would give transparency and certainty to customs and trade operations. However, the Law was passed without much consultation with the private sector, and its enactment took everybody, including the Tax Administration, by surprise. The new National Customs Law contains new procedures, as well as rules creating a system of customs infractions and fines, and it changes the rules on transit guarantees. As a result of these unexpected legislative changes, the trade system in Guatemala is in a state of flux, and many of the findings and recommendations of this report reflect this situation. If this assessment had been done in early 2012 or late 2011, the picture might have been entirely different. In any case, it became obvious to the assessment team that the *Superintendencia de Administracion Tributaria* - SAT (Tax Administration Service) is being called to implement a Law for which they were not ready, and for which they have few systems or procedures in place. The private sector is reacting strongly to the new Law by filing various illegality and unconstitutionality petitions against it and by lobbying Congress and the President of Guatemala to suspend the Law. They achieved an initial partial suspension of most of the fines section of the Law<sup>1</sup>, and after much lobbying, this section was suspended for an additional 90 days in June 2012. On the other hand, on May 30, 2012, the Ministry of Finance (MOF) published a Communication on their website titled “The 7 Myths of the National Customs Law” which gives a detailed response to some of the key issues brought up by the private sector.

Because of this interesting interaction, we believe this is a very fluid time for USAID to support Guatemala’s trade sector, by leading a change management effort, and focusing on helping all sectors to implement this Law. While it is possible that the Law will be modified, it is also true that the country needs a Customs Law and thus new rules and procedures will be put in place. As a result, regardless of the details and changes in the National Customs Law, SAT still needs support to develop a system to manage and impose fines, and the private sector needs training to understand the provisions of the new law and make changes to their operating systems to ensure full compliance with Customs regulations.

Many of our findings and subsequent recommendations for Guatemala were designed in reference to the new Customs Law, but they will be useful regardless of any particular changes made by Congress. Our suggestions will help Guatemala meet its international commitments for trade facilitation.

Within the PTF categories, Guatemala needs support in the following areas:

- Supporting SAT to develop a fines management system, including training for SAT staff, developing and documenting internal procedures, and designing relevant IT systems.
- Developing an independent Customs Appeals Court that helps to bring transparency and trust to the customs appeals process.

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<sup>1</sup> The Law was to fully come into force on June 15, 2012.

- Helping the trade community to improve their import and export procedures to enhance their compliance with Customs regulations in order to minimize National Customs Law infractions, and while doing so, help certain importers to be better prepared to become Authorized Economic Operators.
- Helping the country to better implement the new transit guarantee system of insurance policies and cash deposits, by working with the insurance companies to develop products that are reasonably priced.
- Improving the private sector's understanding of the provisions of the National Customs Law concerning the options for transit guarantees, and fostering an open dialogue between the private sector and the GOG.
- Helping SAT develop processes and systems to better manage the new insurance policies and cash deposits for transit guarantees.

Outside the PTF areas, Guatemala needs generalized support to implement the National Customs Law in order to minimize any negative impact on trade and competitiveness. Guatemala needs to have more public-private dialogue concerning this law, develop an awareness and training campaign, and focus on making companies more compliant by helping them to update processes and have better trade staff. SAT will need to assess its current processes and insert new ones based on the new law. In addition, SAT needs to train its staff, and add automation as soon as possible to avoid undesirable effects of the new law such as discretionary application based on lack of understanding and knowledge.

As with the rest of the region, Guatemala continues to need support to fully implement the AEO program, by working directly with companies to bring them into compliance, disseminating the program and getting companies approved. Finally, Guatemala's OCAs need strong support to better their trade related processes, increase training of their staff, increase internet publications and to add automation to their border processes.

# PURPOSE AND METHODOLOGY

## PURPOSE

The Government of Guatemala has requested assistance from the US Government in improving its Customs and trade facilitation capabilities. At the request of the USAID regional mission in Central America (CGAP), USAID Washington's Bureau for Economic Growth, Environment, and Education (E3) has sponsored technical teams to undertake an assessment of Guatemalan Customs (as well as to conduct similar assessments elsewhere in the region.) This work is implemented under the Business Environments for Agile Markets (BEAM) Task Order by CARANA Corporation.

A specific focus of this assessment is on Guatemala's ability to implement commitments anticipated under the WTO Agreement on Trade Facilitation (in draft). Under a current program launched in Geneva by the US Government in October 2011, the Partnership for Trade Facilitation (PTF), the US will assist developing countries in implementing their commitments under the ongoing Trade Facilitation negotiations at the World Trade Organization (WTO). The PTF will assist developing countries by providing a pool of technical and financial resources targeted on implementation of the specific proposals advanced by the United States in the negotiations. There are currently seven priorities for technical assistance (advance rulings, internet publication, expedited shipments, penalties, appeals, pre-shipment processing, and transit guarantee systems).

The CARANA assessment team was charged with three principal tasks:

- Reviewing and validating progress to date in completing the necessary actions identified in a March 2008 self-assessment of Guatemala's ability to implement the draft WTO Agreement on Trade Facilitation,<sup>2</sup>
- Identifying specific areas in which the United States can support Customs in meeting WTO trade facilitation commitments and expectations, and
- Advising on other aspects of Guatemalan Customs where technical assistance may be appropriate and cost-effectively implemented.

Team members conducted interviews and observations at the Customs headquarters and field offices and at the offices of selected Customs brokers, transportation companies and others in order to validate progress to date in completing actions identified in the WTO self-assessment. They also reviewed relevant documents, laws, and regulations as well as assessments and reports completed under USAID or other donor programs in recent years. In conducting our assessment, we used as a guideline the WTO Negotiating Group on Trade Facilitation's Draft Consolidated Negotiating Text document TN/TF/W/165/Rev.12 of May 8, 2012.

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<sup>2</sup> Developing country WTO members have been encouraged to assess their trade facilitation needs and priorities and, as an integral part of the negotiations, conducted 94 national self-assessments between 2007 and 2010 with technical assistance and funding from a variety of donors and technical organizations.

## METHODOLOGY

For Guatemala, the BEAM project conducted a one-week in-country assessment, preceded by documentary review. We used, as a basis for our research, the Self-Assessment Report completed in 2008 (TN/TF/W/143/Rev.1 / Feb. 2008), as well as the 2009 WTO Trade Policy Review for Guatemala. During our in-country visit, a team composed of Maria Rodriguez Murphy and Rosemarie Luna, under the guidance of the BEAM Chief of Party, Erin Endean, traveled to Guatemala for one week from May 13-19, 2012, and met with over 30 stakeholders from the private and public sectors and donors. A complete list of materials reviewed can be found in Annex 2.

Based on the desk research the team prepared a series of hypothesis of the main problem areas and potential solutions. The focus of the in-country review was not to conduct yet another study, but rather to vet the current needs of the country vis-à-vis previous analysis, and focus on identifying potential areas for support within the PTF framework. Following the discussion of technical assistance needs in the seven PTF topic areas, and at the request of USAID, this report also includes findings and proposed support initiatives that relate to Customs but which are not within the PTF areas.

The team met with local stakeholders including government officials, business leaders, importers, Customs brokers, and freight forwarders to assist in vetting the hypothesis. Following this process, the team conducted a briefing session with USAID Guatemala on May 17 to present the key findings and potential solution areas. The PowerPoint presentation used for the Mission debrief is included in this report as Annex I. Incorporating comments received during this session, the team developed this report. The team will develop a final Regional Report that will include specific prioritization and recommendations for support in Guatemala, along with a specific country action plan, once we have completed all country reports and have discussed our findings with USAID. This will give the team a holistic view of the region and will help the team to produce recommendations that make better use of project funds.

# COUNTRY BACKGROUND

Guatemala is strategically located, with access to both the Pacific and Atlantic Oceans. Northernmost among Central American countries, it is a link between them and Mexico. Despite the importance of trade to the country's economy, the World Bank's Doing Business Indicators for Trading Across Borders for 2012, indicated a decrease of four points in country rankings, situating Guatemala in the 97<sup>th</sup> place for this indicator. According to the report, Guatemala's time to clear goods for import is 17 days (of which 2 days are attributable to Customs). The cost for imports of US\$1,302 per container and for exports of US\$1,127, are both below the average of the Latin American region.<sup>3</sup> In addition, the WTO indicated in its Trade Policy Review for 2009 that *"Since its last review in 2002, Guatemala has continued to place trade liberalization at the core of its development strategy, taking measures such as the streamlining of customs procedures, lowering tariffs, and adopting new government procurement and intellectual property rights legislation; these measures have helped expand trade and investment."*

By law, the Ministry of the Economy (MINECO) is responsible for establishing Guatemala's trade and investment policy<sup>4</sup> and for the representation of Guatemala before the WTO and in other trade-related organizations. All trade negotiations are led by MINECO, regardless of whether they are bilateral, regional or multilateral. However, in trade facilitation, customs plays a key role in both the negotiation and implementation of trade agreements.

In Guatemala, the Superintendencia de Administración Tributaria (SAT) was created 1998 and it integrates both internal revenue and customs administration. It enjoys functional, economic, financial, technical and administrative autonomy and has legal capacity, assets and its own resources. The Board of Directors is chaired by the Ministry of Finance (MOF), but there are four other representatives and their alternates, who are appointed by the President of the Republic. The Superintendent is the Secretary of the Board of Directors.

In 2007, SAT designed and initiated the development of an integrated model of work called "White or Transparent Path", a model that implies the application of a new working philosophy based on institutional values, allowing a more efficient, effective and transparent revenue and customs management. This management model includes four main areas: trained and professional human resources, IT systems for the administration of customs processes, functional infrastructure and customs security. Most recently, in 2010 Guatemala launched its Authorized Economic Operator (AEO) program, which it is still in the process of implementing. Guatemala recently conducted a pilot test of the system and is now open to receive formal requests. The Customs Administration has created a specific unit for AEO. Also, SAT has received support from the Government of Korea to improve its risk management systems.

At the regional level, Guatemala is one of the Members of the Central American Economic Integration Treaty. Also, it has entered into eight Free Trade Agreements and four Partial Scope Trade Agreements with most of its main trading partners. Currently, the EU Association Agreement has concluded and is pending approval from the European Parliament; and, other negotiations are taking place, such as with Trinidad and Tobago.

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<sup>3</sup> World Bank, Doing Business Report 2012, Ease of Doing Business in Guatemala at <http://www.doingbusiness.org/~media/fpdkm/doing%20business/documents/profiles/country/GTM.pdf>.

<sup>4</sup> Decreto 114-97, Ley del Organismo Ejecutivo.

The United States continues to be Guatemala's main trading partner, with other countries in Central America collectively also being significant export and import partners. Guatemala's exports were US\$10.4 billion in 2011, mostly from the textiles, coffee, stones and precious and semiprecious metals, sugar, banana and rubber sectors. Guatemala's imports were US\$16.6 billion in 2011, with the main imports being consumer goods, intermediate goods and industrial raw materials.<sup>5</sup>

Guatemala created a single window for exports in 1986, as one of the first steps to simplify export-related procedures. However, it was not until 1998 that a concession was awarded to the Exporters Association (AGEXPORT), to administer this single window and develop the virtual single window for exports, further improving the service. This has been successful and now Guatemala is exploring the best way to create either a single window for both imports and exports or a separate one for imports.

While Customs has shown marked improvement in the past few years, this has not been the case with the other control authorities (OCA). Health, Agriculture, Defense, the Medicines regulator and other agencies present at the border are lagging behind in all aspects. They have outdated, complex and unclear trade procedures, very little staff and training dedicated to trade facilitation, automated systems that are either old or non-existent, and they have other priorities that keep them from focusing funds and resources on trade facilitation. The OCAs have good ad-hoc communication with Customs, but their systems are not interconnected. We found that all of these agencies are very interested in reform and are looking for support to modernize their trade services. They are all hopeful that a new single window for imports will bring much-needed communication and synergies.

On the other hand, the private sector in Guatemala is very well organized and active. We spoke to the main chambers of the country, including AGEXPORT, the Fundación para el Desarrollo de Guatemala – FUNDESA (Foundation for the Development of Guatemala), the Chamber of Industry, American Chamber of Commerce (AmCham), Association of Courier Companies and the Association of Customs Brokers, and found that they are coordinating efforts.

In Guatemala, CONAPEX (the Export Promotion Council) established in 1986, and staffed by high-level representatives of different Government and private sector institutions, is tasked with preparing and proposing to the President of Guatemala the country's policy regarding export promotion, diversification, and growth. Also, there is a National Competitiveness Program (Programa Nacional de Competitividad – PRONACOM), coordinated by MINECO, and organized through an Executive Committee composed of representatives from the government, the private sector and civil society, and by an Extended Council that includes international cooperation agencies/organizations and special guests. At the beginning of 2012, with support from USAID, this group published the National Competitiveness Agenda for 2012-2015.

Guatemala has recently approved its National Customs Law<sup>6</sup> based on provisions of the Central American Unified Customs Code Version IV (CAUCA) and its Regulation (RECAUCA). This has been considered in general as a positive step, since Guatemala was the only country in Central America that did not have any domestic customs legislation. However, since the law's entry into force, there has been strong opposition to the approval process (without previous consultation) and the way it has been implemented. Even the Customs authorities have mentioned that the timeframe to enter into force (8 days after its publication) was not sufficient for them to implement all its provisions. The main concern for the private sector is that these measures have resulted in delays in customs procedures, the

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<sup>5</sup> <http://www.banguate.gob.gt>

<sup>6</sup> Decree Law10-2012 of the Congress of the Republic of Guatemala.

imposition of expensive fines, and discretionary application of the law by Customs authorities. As a result, several fines were suspended through Decree 51-2012, effective initially only until June 15<sup>th</sup> 2012. After the conclusion of this report and assessment, we learned that the suspension had been extended for another 90 days.

On May 30, 2012, the Ministry of Finance (MOF) published a Communication on their website titled “The 7 Myths of the National Customs Law” giving a detailed response to some of the key issues brought up by the private sector. The MOF discusses the following “myths”:

1. The Law was improvised: MOF clarifies that the Law is the result of the commitments made by Guatemala in 1963 as part of the Central American Economic Integration Agreement. It indicates that the new law is consistent with CAUCA’s requirements to have customs infractions and fines regulated by national law. MOF said that it has taken Guatemala 50 years to comply with this requirement while the other countries had already complied many years before.
2. The law will increase costs: MOF says this is false because there should be no cost impact if companies comply with customs provisions. If anything, the law should help companies be compliant and this should improve the overall transparency of trade operations.
3. The Law will hinder competitiveness: MOF indicates that competitiveness will increase when traders are compliant and follow the law. The Law will have a positive impact on the country’s competitiveness index, because in addition to having a more efficient government, and more automation, a country needs to have players in the marketplace who are operating ethically with social responsibility.
4. The law sends a bad message to trade and commerce: On the contrary, MOF says that the Law shows the country’s willingness to comply with international obligations, and that it is bringing transparency to commercial operations.
5. The Law will increase corruption: MOF says the Law will have the opposite effect. It seeks to improve the conduct of customs brokers and importers. The Law seeks to promote ethical and honest behavior.
6. The Law has no implementing regulations: MOF indicates this is also false, and that SAT has internal procedures already in place to implement its provisions.
7. Fines have the purpose of increasing customs collections: MOF indicates that the purpose of the Law is to increase compliance not collections.

## DONOR EFFORTS IN GUATEMALA

USAID Guatemala has a project in place called the Regulatory Policy Support Project (PRS), which has, within its scope, a component that focuses on trade capacity building. The project is working with AGEXPORT to help build capacity in customs issues and trade facilitation, and to develop trade as well as the policy environment related to trade. Based on our conversations with project staff, we learned that PRS will focus on measuring clearance times at Guatemala’s main ports of entry to help determine

how to better target their policies and procedural reform efforts, and will also support the import single window.

As for the World Bank, we understand from our visit to El Salvador, that in July 2012 they will produce their agenda for regional trade facilitation efforts and support. The Bank plans to include support for more regional integration. It also will work to improve the Enquiry Points for SPS Standards as mandated by the WTO.

The IDB is implementing a non-reimbursable technical cooperation project<sup>7</sup>, which is helping SAT and the MOF to fight contraband, improve security and facilitate trade. Its program has two main elements: (i) completing a border-crossing study from the point of view of security, control and trade facilitation, taking into account the sustainability of proposals for local development, and (ii) supporting the coordination between Guatemala and its neighbors to improve control at the border crossings while facilitating trade. This is being done by harmonizing border procedures and enhancing risk management systems.

As for the EU, according to their 2007-2013 plan, they are supporting regional integration and the customs union, as well as harmonization of policies.<sup>8</sup> These initiatives will be discussed at length in the regional report.

Finally, SAT has received support from the Government of Korea (The Korea International Cooperation Agency (KOICA)) to improve Guatemala's efficiency to detect and select suspicious cargo, and mobilize revenue by improving the collection of duties and taxes. The 24 month project, launched October 2009 valued at US\$2.8 million, focused on developing a data warehouse and a risk management system for SAT, purchasing equipment for the performance of the systems, and training customs officers.

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<sup>7</sup> GU-T1149 : Strengthening Control, Security and Trade Facilitation at the Border Crossings – US\$408,000.

<sup>8</sup> See: EU, *Nota Informativa Sobre la Cooperación Regional de la Unión Europea En Centro América*, Sep. 2011.

# KEY FINDINGS

As stated in the purpose section of this report, the focus of the team was to identify trade facilitation measures that are framed under the PTF areas. Our general findings are discussed below. We are also focusing on presenting prioritizations and recommendations to address the key issues identified, but at the request of USAID, these will be presented at a final stage in a regional report that compares all country findings and needs.

## FINDINGS RELATED TO PTF CATEGORIES

### I. ADVANCED RULINGS

Guatemala is in compliance with WTO’s requirements for Advanced Rulings via the AR provisions contained in article 72 of CAUCA; articles 291 to 310 of RECAUCA; and CAFTA-DR article 5.10. In addition, Customs issued an internal procedure in 2011 (PR-IAD/DNO-PE-08), which is posted in SAT’s Website. AR can be filed for:

- Classification,
- customs valuation in regards to the application of GATT Article VII and its regulations, and/or
- verifications of origin.

In compliance with WTO requirements, all regional legislation provides that customs shall issue AR within 150 days of the filing of a fully compliant application.

Although customs has internal procedures, and has developed easy-to-use forms for filing AR, there have been no more than three AR requests since the procedure was issued a year ago. SAT indicated they are ready to process as many AR as have been filed, but they are not in the position to deal with more at this moment. The private sector mentioned that one of the reasons they are not using them is because they have the possibility of requesting Technical Opinions<sup>9</sup> that have proven useful and that bring similar results in less time. These Technical Opinions are simple technical decisions issued by the technical departments of SAT (such as the Operations Department) and that do not require the review of the Legal Department. They are issued in an expedited manner and, according to our interviewees, are binding for a short period of time (15 days).

### Advance Rulings

“A Member shall issue legally binding rulings in a timely manner, and in advance of the relevant trade transaction, at the request of an interested person who has provided the Member with all ... necessary information.”

Source: WTO TN/TF/W/165/Rev.12, 8 May 2012, Article 3

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<sup>9</sup> Regulated by the *Procedimiento para la Emisión de Opinión Técnica de la Unidad Técnica de Operaciones y Seguridad Aduanera* Number: PR-IAD/DNO-PE-12.

The trade community mentioned they were not familiar with the AR provisions and that the cost/benefit was not clear to them. There seems to be misinformation in the private sector regarding the purposes of filing for an AR, as well as both the costs and potential benefits.

## 2. INTERNET PUBLICATION

Guatemala has trade-related information in a variety of government agency websites, Customs' publications are available in SAT's website <http://portal.sat.gob.gt/sitio/>. The trade community agrees that SAT has created an automated system that works well, and that customs information, laws and regulations are easy to access. Customs also has published customer friendly guides for various customs operations such as how to import, documents needed for temporary imports, how to register as an importer, and how to import used vehicles, among others.

Concerning OCA, the Ministry of Agriculture and Livestock (MAGA) has information and regulations on its website, and it is possible to download some of the forms that must be presented to obtain SPS certificates. However, it is not possible to apply online for SPS permits and send other documents virtually because under Guatemalan Law, a special kind of paper must be used which has a duty stamp on it or in lieu thereof, a stamp must be affixed to the physical papers used to file.

The Ministry of Health (MSPAS) does not participate in the single window for exports. Each permit must be requested directly from the Ministry at its offices.

The lack of application and acceptance of electronic signature was mentioned by both, private and public sector. There is a law that accepts electronic communications and signatures as valid<sup>10</sup>, but the regulations have not been approved. There is only one certifying entity that is operating through the Chamber of Commerce.

Another problem that was mentioned was the lack of updated information and regulations. Eventually each ministry updates the regulations and agreed procedures, but this can take up to a month.

## 3. EXPEDITED SHIPMENT

As mentioned in the El Salvador and Honduras report, Guatemala, as part of the Central American Customs Union, follows the provisions of CAUCA article 110 regulating Urgent Shipments, as well as RECAUCA articles 563-577 which govern express shipments. As party to CAFTA-DR, Guatemala follows articles 5.2 and 5.7 regulating Express Shipments.

### Internet Publication

“2.1 Each Member shall [to the extent possible] make available and update as appropriate the following through the internet:

(a) A description of its importation, exportation and transit procedures [, including appeal procedures]...

(b) The forms and documents required for importation into, exportation from, or transit through the territory of that Member.

[(c) [Relevant trade-related legislation]...

Source: WTO  
TN/TF/W/165/Rev.12, 8 May

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<sup>10</sup> Decree Law 47-2008 of the Congress of the Republic of Guatemala.

Guatemala is one of the most advanced countries in Latin America for expedited shipment processing, and has an operating model that was presented as a case study to the WCO due to its functional excellence. There is a strong commitment between the public and private sector to keep courier operations running smoothly, which was successful until the issuance of the National Customs Law. The new Law had a negative impact on clearance times, but by the date of this assessment, we were informed by courier companies that the clearance time had gone back to normal.

The courier manifest is sent electronically prior to arrival, and payment is also done electronically prior to arrival. Both public and private sector indicated that there are no problems in the area of courier shipments and, based on the WTO requirements, we feel there is no work required in this area.

#### 4. PENALTIES

As indicated before, on March 12, 2012 the Congress of Guatemala enacted the National Customs Law. This document contains a clear definition of customs infractions and the corresponding fines. Article 123 thereof regulates administrative offenses, and articles 126 and 127 contain a long detailed list of administrative infractions. Article 128 contains a list of material administrative infractions. Thereafter the Guatemalan law contains lists by article of specific infractions and their corresponding sanction. Finally, the Law contains detailed procedures to apply the sanctions. It does not, however, contain procedures to dispute the fines and penalties.

This instrument brings Guatemala into compliance with its international commitments to have a clear system of customs infractions and fines. Regardless, the private sector is not pleased with the new instrument, although most of them understand that Guatemala was in need of a document that regulated customs infractions. Most of the issues regarding the fines have to do with:

- **Lack of consultation.** Per our interviews, neither the trade community nor SAT were expecting this law because it was apparently issued without much consultation with the private sector. We understand from our discussions that the Customs Law was approved as part of the fiscal reform package, which in its initial stages was not supposed to include customs provisions.
- **Short period between publication and application of the new law.** The time to implement: the new law indicated that it would commence application just eight days after its publication. This time was unusually short, and it did not give time for any sector to prepare for its application. As mentioned

#### Expedited Shipments

A Member [shall/may] adopt or maintain procedures allowing for expedited release of at least those goods entered through air cargo facilities to persons that apply for such treatment....

Source: WTO  
TN/TF/W/165/Rev.12., 8 May  
2012, Article 7

“We were not consulted about this new Customs Law. It came as a surprise to us and to Customs. The fines are terribly high. This is just a way for the government to collect money, not to really curtail bad behavior.”

*Private Sector Interviewees*

“We were not expecting the Law, and we were given only 8 days to apply it once it came out. We worked day and night to prepare ourselves to enforce the chapter on fines, but we still do not have processes or systems in place.”

*Guatemala Customs*

above, certain sections of the Law have been suspended twice.

- **Lack of proportionality.** The trade community perceives many fines to be excessive for the type of infraction. However, SAT indicated that this was really not an issue of proportionality. They indicated that from their point of view, any provision that has a direct impact on the finances of importers would have been received negatively regardless of the amount.
- **Insufficient training to improve compliance and reduce the need for penalties.** Since all sectors agree that this Law was necessary, the issue is more about working with the private sector to get them used to the idea of a new sanctions system, and train them to help reduce the number of incidences where they are penalized.

As a result of the push-back from the private sector, Congress has temporarily suspended some of the fines.<sup>11</sup> However, the suspension is not permanent and most of the infractions and fines are expected to resume (or commence) in June 2012.<sup>12</sup> Currently, the private sector is requesting that the President of Guatemala order Congress to suspend the sanctions of the Law for another 6 months.<sup>13</sup>

## 5. APPEALS

**Customs Appeals:** In the specific area of Customs appeals, Guatemala applies the provisions contained in Title VIII of RECAUCA directly. Per those provisions, private parties have the right to file administrative petitions against SAT, which petition will be decided in first instance by the head of SAT. Thereafter, according to RECAUCA, parties can appeal Customs' decisions before the Customs Court, which in this case is part of the Directorate of SAT (see below). Finally, parties can bring disputes before the judicial system once all administrative petitions have been exhausted.

For anything not regulated by RECAUCA, Guatemala uses the provisions of the Tax Code as reformed by Decree 4-2012 as secondary source of law. Articles 154 and following of the Code regulate two types of administrative petitions: Petition to Revoke and Revision Petition. The first, which is filed before the same person who issued the decision being challenged, is finally decided by the SAT directorate. The second is filed against the decisions of the Directorate of SAT or the Minister of Finance. The Code provides that administrative silence will mean that the petition has been denied and the claimant can proceed to the next step.

Finally, in order to comply with its international commitments to have a Customs Administrative Court, Guatemala gave the

### Appeals

Each Member shall provide that any person to whom customs [or another relevant border agency] issues an administrative decision has the right, within its territory, [without penalty,] to:

(a) administrative appeal ... [of] the official or office that issued the decision; and [or]

(b) judicial appeal of the decision...

Source: WTO  
TN/TF/W/165/Rev.12, 8 May 2012,  
Article 4

<sup>11</sup> The Congress decided in June 2012 to suspend most of the fines for a period of 90 days.

<sup>12</sup> After completion of this report, Congress suspended the fines for another 90 days as of June 2012.

<sup>13</sup> See: Estrategia y Negocios, Piden prórroga a ley de aduanas de Guatemala, available at:

<http://www.estrategiaynegocios.net/2012/05/28/piden-prorroga-a-ley-de-aduanas-de-guatemala/>.

Prensa Libre, Conapex solicita aplazar multas, [http://www.prensalibre.com/economia/Conapex-solicita-aplazar-multas\\_0\\_707329265.html](http://www.prensalibre.com/economia/Conapex-solicita-aplazar-multas_0_707329265.html)

Directorate of SAT the role of Customs Court. There are no fixed court personnel; it is really the same directors of SAT playing the role of administrative court. Accordingly, Guatemala has only partially complied with its anticipated WTO commitments in this area. While in theory there is a Customs Court, the court should be independent from the Customs Administration. It should function with impartiality. Having the directors of SAT as members of the court simply means that they are party and judge at the same time. Because of this, the private sector has no belief in the appeals system and rarely makes use of this mechanism. When we interviewed SAT, they indicated that they were aware that the system was not perfect and that they needed support to create a Customs Court that was fully compliant with international commitments.

**OCA:** We did not find any rules governing appeals for trade related decisions of the OCA. We understand from discussions in country that some agencies have internal procedures, and others apply the Tax Code. However, as with other countries in the region, we found that petitions are rarely used because the administration takes too long to decide, traders have no trust in the system, and they would rather make whatever amendments the administration requires than dispute a decision.

## 6. PRE-ARRIVAL PROCESSING

Guatemala allows importers to send the manifest, consolidated courier manifest, and the declaration to the SAT prior to arrival. There is currently no pre-arrival processing for OCAs. Both the private sector and SAT indicated that there were no major issues with the electronic transmission of documents prior to arrival in the case of customs and did not see the need for any support in this area. This was not the case with our interviews at MAGA, which indicated that they were in need of automation of their trade processes, and that they would strongly support an initiative to update and connect their systems to other agencies, including SAT.

## 7. TRANSIT GUARANTEE SYSTEMS

According to Article 29 of Resolution 65–2001 of the Ministers in Charge of Economic Integration and Regional Development (COMRIEDRE), the mode of transportation is given in pledge as guarantee of the Customs duties and taxes in the case of transit operations when moving goods between Customs territories within the region.

Guatemala regulates transit guarantees via the National Customs Law. The new Law provides that parties must either purchase an insurance policy or make cash deposits to cover the duties and taxes payable in case the importer breaches the temporary import regime.

This is the second most controversial provision of the Customs Law. We found a lot of confusion on the part of the private sector regarding transit guarantees under the new law. On one side, several representatives of the trade community said that they felt the provision was aimed at forcing importers to insure their cargo for cases of theft while on transit on Guatemala's roads. They said that security was the GOG's obligation, and that they saw no reason why they should be securing the cargo. Others

### Pre-Arrival Processing

“Each Member shall adopt or maintain procedures allowing for the submission of import documentation, [manifests] and other required information [to customs and other relevant border agencies] in order to begin processing [and examination] prior to the arrival of goods with a view to expediting the [clearance and] release of goods upon arrival...”

Source: WTO  
TN/TF/W/165/Rev.12, 8 May 2012,  
Article 7

said that SAT and the insurance companies had signed a deal to fix the cost of the insurance at 0.45% of the unpaid amounts. They mentioned that transportation companies already had purchased and posted a global bond with customs to secure the cargo and thereby be allowed to transit in the country, and that should be enough and now they were being required to double guarantee. Finally, a few private sector members said that the Law now only gives them the option of the insurance policy and there are no other options to provide the guarantee.

These beliefs are not entirely correct. In our conversations with SAT, we clarified that the policy is not aimed at securing the cargo in cases of theft, but it is aimed at securing the duties and taxes, which is the responsibility of the importer and not the administration. We also learned that while the transportation companies have posted bonds, the amounts of these are insufficient to cover duties and taxes<sup>14</sup>, and Customs has never been able to execute a bond. We learned that there is no agreement between GOG and the insurance companies to fix the cost of the policy. Finally, SAT clarified that the law gives the importer the option to make cash deposits to cover the unpaid duties and taxes, and the deposit is released as soon as the cargo reaches its destination.

## FINDINGS OUTSIDE THE PTF CATEGORIES

In general, the main issue discussed at most of our meetings was the National Customs Law. We included various initiatives in the PTF categories that have to do with the implementation of the provisions of the Law within SAT and by the private sector. In general, Guatemala needs support in the area of change management to help both sectors understand, comment, review, train and apply the new Customs Law. The private sector has been very active in presenting petitions against the Law, and in pushing for Congress and the President of Guatemala to suspend certain provisions of the Law. It now remains to be seen what will happen next. As of the date of this report, all the provisions of the Law are to come into force in June<sup>15</sup>, and any support by USAID to Guatemala would need to be adapted to the reality at the specific moment of the implementation of the USAID initiatives.

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<sup>14</sup> SAT indicated that the law requires transportation companies with less than 20 trucks to post a bond for US\$7,600. If the company has more than 20 trucks, the amount is US\$12,700. SAT indicated that a single truck can carry merchandise worth many times over the amount of the bond, and that as a result they cannot really recover unpaid duties or taxes.

<sup>15</sup> A new 90-day suspension was agreed by Congress in June 2012.

# POTENTIAL SUPPORT AREAS

As agreed with the USAID Regional Mission for Central America, we will prepare country action plans for PTF assistance to Guatemala once USAID Washington, USAID/GCAP, and USAID/Guatemala have had an opportunity to review this report and discuss its findings. As a first step to identifying areas of potential USAID assistance, this report presents several possible areas of assistance under the PTF and outside of that program.

## WITHIN THE PTF AREAS

### I. APPEALS

USAID could help to create a Customs Court that is fully compliant with Guatemala's international commitments:

- a. Work with the GOG to build awareness about the urgent need to remove the Customs Court from the SAT Directorate.
- b. Once the GOG has agreed to relocate the Court, it would need support to:
  - Draft implementing and procedural legislation
  - Develop process maps and manuals
  - Write easy to use forms for appellants
  - Develop case management software using any of the USAID models
  - Develop a website for the court with a section for publication of decisions
  - Donate equipment if possible
  - Define infrastructure needs and help to find suitable infrastructure
  - Define staffing and skill sets of members of the court and other staff
  - Help to screen / hire staff
  - Train members of the court in their new roles and processes
  - Develop a public awareness campaign
  - Help to build linkages between the court and other similar entities worldwide
  - Assist in building linkages with WCO to help with technical criteria

### 2. SANCTIONS

While the issues concerning sanctions are in flux at the time of the report, it will become important to help both SAT and the private sector in the area of sanctions. At this time, it is difficult to estimate the exact nature of the type of support that would be needed, but based on the information the team has at the date of this report, we feel Guatemala would benefit from:

- a. Helping SAT to develop processes and IT systems to put into place a fines management system.
- b. Train SAT staff to help them implement the provisions of the National Customs Law concerning fines, and to ensure a harmonized application across all officers, thereby curtailing any discretionary criteria in the application of fines.

- c. Assuming the fines will remain in place, provide training to the private sector to help them adapt to the system and make any changes necessary so as to avoid incurring customs infractions.

### 3. TRANSIT GUARANTEE SYSTEMS

Also part of the new Customs law, this issue is in flux at the time of the report, but as opposed to the fines, the guarantee system is fully in force. In this area, the work would include:

- a. Work with the insurance companies to develop products that are reasonable and with competitive process. Work to ensure there is no cartelization by insurance companies of the cost of these policies.
- b. Work with the private sector to help them understand the rationale for this requirement (change management and awareness).
- c. Develop procedures and training in SAT to help them implement these new provisions of the Customs Law.

### OUTSIDE THE PTF AREAS

The implementation of the National Customs Law in Guatemala has had a strong impact on the trade community. We found that the private sector is misinformed about the rationale, content and impact of the Law. A project could focus on working to build the public-private dialogue around the implementation of the National Customs Law, building on the coalitions and private sector coordination that currently exists in the country.

There was so much focus on the issue of the National Customs Law, that problems relevant to other countries, such as the Authorized Economic Operator, the Single Window for Imports, and expedited clearance were not given importance and relevance when we asked. However, as with the rest of the region, the country also needs support in these areas. As indicated Guatemala already has a law in place to govern AEO, it has procedures, and it needs help to disseminate the program and start getting companies approved. As with most customs in the region, Guatemala needs to continue to automate processes, work with OCA to better integrate systems and connect databases, and work to train staff and educate the private sector.

# ANNEXES



# ANNEX I: MISSION DEBRIEF



## Presentación

Diagnóstico de Necesidades de Guatemala en el Sector de Comercio Exterior dentro del Marco del *Partnership for Trade Facilitation*

14-18 de mayo de 2012

Business Environments for Agile Markets (BEAM) is a USAID project managed by CARANA Corporation.



**El diagnóstico se llevó a cabo bajo la iniciativa del *Partnership for Trade Facilitation***

### Marco de Trabajo



## Visitamos a entes del sector público, así como a gremiales del sector privado y a donantes

### Entes Entrevistados por Sector

Entes del Sector Privado	Entes del Sector Público	Donantes/Regionales
<ul style="list-style-type: none"> <li>• Cámara de Industriales</li> <li>• Amcham</li> <li>• Fundesa</li> <li>• Agexport</li> <li>• Corporación de Agentes Aduaneros</li> <li>• Couriers</li> <li>• Empresas de logística</li> </ul>	<ul style="list-style-type: none"> <li>• SAT</li> <li>• Ministerio de Economía</li> <li>• Ministerio de Agricultura</li> </ul>	<ul style="list-style-type: none"> <li>• BID</li> <li>• Proyecto USAID</li> <li>• SIECA</li> </ul>

En total, recibimos insumos de más de 30 personas

## La coyuntura de la Nueva Ley de Aduanas tiene mucho impacto en los problemas detectados

- La recientemente aprobada Ley de Aduanas ha tenido un impacto significativo en las respuestas recibidas de parte de ambos sectores
  - Impacto directo en el tema de multas, algunas de las cuales están suspendidas
  - Impacto en el tema de las garantías para tránsito
  - Afectación de los tiempos de despacho
  - Situación en movimiento con posibilidades de cambios que afectan el diagnóstico
- Hay herramientas de comercio exterior sub-utilizadas por el sector privado principalmente por problemas de desconocimiento, como por ejemplo las Resoluciones Anticipadas
- Guatemala no está en cumplimiento real de su obligación de crear un Tribunal Aduanero
- En comparación con la SAT, las Otras Autoridades de Comercio exterior (Agricultura, Salud, otras) están en un estado de mayor atraso en cuanto a la modernización de sus sistemas
- No hay interconexión entre los sistemas y bases de las OAC con SAT, no se comparte la información en tiempo real

**Encontramos problemas principalmente en 4 temas del PTF: Multas, Garantías para Tránsitos, Resoluciones Anticipadas y Apelaciones**

## El tema de multas es grave debido a las disposiciones de la nueva Ley de Aduanas

Multas	
Problemas	Potenciales Soluciones
<ul style="list-style-type: none"> <li>• <b>Sector Privado</b> <ul style="list-style-type: none"> <li>• "Se dictó la nueva Ley de Aduanas de la noche a la mañana, sin aviso ni consulta"</li> <li>• "Las multas son exorbitantes y desproporcionadas"</li> <li>• "La Ley va a retroceder a Guatemala y hacemos menos competitivos"</li> </ul> </li> <li>• <b>Sector Público</b> <ul style="list-style-type: none"> <li>• "El error más grave de la nueva Ley es darnos 8 días para implementarla"</li> <li>• "SAT necesita apoyo para crear un sistema de gestión de multas"</li> </ul> </li> </ul>	<ul style="list-style-type: none"> <li>• El problema de las multas es altamente inestable a la fecha del estudio, y es posible que hayan cambios en la Ley que hagan necesario revisar cualquier recomendación en este sentido</li> <li>• Aun así, la SAT requiere de un sistema de administración y gestión de multas porque se espera que independientemente de la Ley, SAT va a tener que imponer y administrar multas en algún momento futuro</li> <li>• Trabajar con el sector privado para facilitar la aplicación / discusión de la nueva Ley</li> <li>• Trabajar con las gremiales, en particular los agentes de aduanas, para entender las multas y capacitar a sus agremiados</li> </ul>

## El problema de las garantías para envíos en tránsito es nuevo debido a la nueva Ley de Aduanas

Garantías para Tránsitos	
Problemas	Potenciales Soluciones
<ul style="list-style-type: none"> <li>• <b>Sector Privado</b> <ul style="list-style-type: none"> <li>• "Con la nueva Ley ahora debemos presentar doble garantía, además de comprar seguro por cada movimiento de la carga"</li> <li>• "El sistema es terrible y va a carecer los costos 0.45% por cada movimiento"</li> <li>• "Debería haber otros mecanismos"</li> </ul> </li> <li>• <b>Sector Público</b> <ul style="list-style-type: none"> <li>• "La SAT nunca ha podido cobrar las fianzas de los transportistas, las fianzas globales no son suficientes. Se permite el depósito en efectivo"</li> <li>• "SAT no tiene nada que ver con los precios de las aseguradoras"</li> </ul> </li> </ul>	<ul style="list-style-type: none"> <li>• Esta sección de la Ley de Aduanas está vigente, y se debe hacer trabajos para ayudar a implementar la Ley en el caso de que no vaya a haber modificaciones</li> <li>• Las aseguradoras no deberían fijar precios (cartelización de precios)</li> <li>• SAT necesita apoyo para administrar los seguros</li> </ul>

## Las Resoluciones Anticipadas son herramientas sub-utilizadas

Resoluciones Anticipadas	
Problemas	Potenciales Soluciones
<ul style="list-style-type: none"> <li>• <b>Sector Privado</b> <ul style="list-style-type: none"> <li>• "Realmente no usamos el mecanismo porque tenemos otros como los dictámenes técnicos que hacen el mismo rol con menos tiempo de gestión"</li> <li>• "Los que no lo usan es porque realmente no lo conocen bien"</li> <li>• "No está claro el costo/beneficio para el empresario"</li> </ul> </li> <li>• <b>Sector Público</b> <ul style="list-style-type: none"> <li>• "La SAT está preparada para emitir RA, pero no puede con más carga en este momento"</li> </ul> </li> </ul>	<ul style="list-style-type: none"> <li>• Concientización para que los empresarios entiendan los beneficios de la herramienta</li> <li>• Capacitación para la SAT en cuanto a temas técnicos que se consultan en las RA</li> <li>• Análisis costo/beneficio para los empresarios de solicitar las RA</li> </ul>

## El sistema de apelaciones es lento y Guatemala no ha cumplido con sus obligaciones internacionales

Apelaciones	
Problemas	Potenciales Soluciones
<ul style="list-style-type: none"> <li>• <b>Sector Privado</b> <ul style="list-style-type: none"> <li>• "Casi nunca se hace uso de los sistemas de apelación y recurso en SAT"</li> <li>• "Aquí no tenemos procedimientos para la administración, únicamente para los solicitantes"</li> <li>• "Tengo varios recursos que ya llevan 2 años sin resolverse"</li> <li>• "Aquí el "tribunal aduanero" es juez y parte"</li> </ul> </li> <li>• <b>Sector Público</b> <ul style="list-style-type: none"> <li>• "Para recursos, SAT aplica el Código Tributario y sí hay términos"</li> <li>• "Para el MAGA se usa la Ley Contencioso Administrativa, pero hemos visto muy pocos recursos"</li> <li>• "Guatemala cumple parcialmente con el requisito del Tribunal"</li> </ul> </li> </ul>	<ul style="list-style-type: none"> <li>• Estudiar el estado actual del "Tribunal Aduanero" dentro de la SAT, y hacer recomendaciones para que Guatemala esté en cumplimiento cabal con sus obligaciones internacionales</li> <li>• Publicar las sentencias en internet (impacto también en el punto sobre Publicaciones en Internet)</li> <li>• Desarrollar normativas procedimentales claras para recursos, apelaciones y operación del tribunal</li> <li>• Dar capacitación a ambos sectores</li> </ul>

## Hay otras áreas de apoyo necesarias pero que no están incluidas en el PTF

- **Operador Económico Autorizado**, se necesita apoyo para que Guatemala siga avanzando con el tema
- Hacer estudio **Costo / Beneficio** de las herramientas del comercio exterior
- **Capacitación** para todos los sectores/ capacitador virtual
- Apoyar el **reconocimiento mutuo** de certificaciones/ OEA/ aplicar reglamentos técnicos aduaneros en la región
- Apoyar la **ventanilla única virtual** mediante el análisis de los procedimientos de las OAC, estudio de enlaces técnicos entre SAT y OAC
- Necesidad de dotar los **laboratorios** de MAGA
- Mejores **sistemas y bases de datos** para las OAC

## Muchas gracias, estamos a la orden para preguntas y consultas

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## ANNEX 2: DOCUMENTARY REVIEW PRIOR TO DEPLOYMENT

Before deployment the team reviewed the following documents:

- USAID / Centroamérica, “*Evaluation of the Regional and Bilateral Programs to Support Trade Compliance under CAFTA-DR / Final Report*”, August 2011.
- USAID / Regional Program for CAFTA-DR, “*Diagnóstico y Recomendaciones para la Consolidación Institucional de la Comisión de Facilitación de Comercio Exterior Centroamericana (COFACECA)*”, June 2009.
- USAID, “*Seldon Project – Guatemala Diagnostic Report*”, 2004.
- IDB, “*Proyectos de Aduanas, Facilitación de Comercio y Logística*”,
- IDB, “*Desarrollos de Ventanilla Única en la Región*”.
- SIECA, “*Borrador Manual Único de Procedimientos Aduaneros*”, March 2012
- EU, “*Nota Informativa sobre la Cooperación Regional de la Unión Europea en Centroamérica*”, September 2012.
- WB, “*Taller Facilitación de Comercio en Centroamérica – Informe Final*”, February 2012.
- WTO, “*Guatemala-Trade Policy Review*”, 2008.
- WTO, Report on the Self-Assessment completed in 2008 (TN/TF/W/143/Rev.1 / Feb. 2008)
- WCO, Presentation: “*The Customs Assessment Trade Toolkit: An Applied Approach of Best Practices*”.
- Regional Customs Legislation: Central American Unified Customs Code and its Regulation (CAUCA, RECAUCA) and CAFTA-DR provisions.
- Guatemalan laws including: The Tax Code and Decree 10-2012 containing the National Customs Law.



## ANNEX 3. MEETINGS HELD

### Public Sector

- Ministerio de Economía MINECO (Ministry of the Economy)
- Superintendencia de Administración Tributaria SAT (Tax Administration)
- Ministerio de Agricultura y Ganadería MAGA (Ministry of Agriculture and Livestock)

### Private Sector

- CPS Logistics / Courier
- Cámara de Industriales (Chamber of Industries)
- Asociación de Exportadores de Guatemala - AGEXPORT (Chamber of Exporters)
- American Chamber of Commerce / Guatemala (AmCham)
- Corporación de Agentes de Aduanas (Corporation of Customs Brokers)
- Fundación para el Desarrollo de Guatemala FUNDESA (Foundation for the Development of Guatemala)

### Donors / International Entities

- SIECA
- IDB
- USAID - Regulatory Policy Support Project