



AMCHAM  
GUATEMALA

AMERICAN CHAMBER OF COMMERCE

# AmCham **in** Action

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## AMCHAM IN ACTION 2023

The Guatemalan - American Chamber of Commerce (AMCHAM) stands out as the most influential bilateral chamber in Guatemala with an unyielding commitment towards building trade relations between Guatemala and the United States. Our main objective is to promote trade exchanges and enhance both economies, based on free enterprise principles. Through specific initiatives such as business training programs and investment for a, we promote responsible market growth and decent job creation.

On the economic front, Guatemala is the largest economy in Central America. In 2022, our Gross Domestic Product (GDP) had a 4.1% growth, and a 3.5% expansion was projected for 2023. This economic strength, reflected in macroeconomic stability and a 9.7% income increase from family remittances in 2023, attests to the investment-friendly environment of the country.

The United States remains Guatemala's main economic partner. This bilateral relationship, strengthened by incentives offered by Guatemala, has withstood several political and legal challenges. AMCHAM has been critical in this process, facilitating dialogue and trade agreements to benefit both countries.

This report highlights key public policies that AMCHAM views as essential to improving the business climate in Guatemala. Among these, we underscore the importance of legal certainty, infrastructure improvement and promotion of competition, all crucial aspects to attract and retain foreign investment.

Looking to the future, AMCHAM is committed to continuing its work towards economic development and bilateral cooperation. Our efforts will focus on promoting an even more inclusive and sustainable business environment, ensuring that Guatemala remains an attractive destination for international investment.

## Legal certainty: Fundamental pillar for trade development

The soundness of trade relations promoted by the Guatemalan - American Chamber of Commerce relies on a foundation of transparency and respect for Guatemalan Law. Legal certainty not only attracts investors but is also crucial for the sustained growth of investment. Rigorous abidance by national laws facilitates access to comprehensive economic development opportunities, which strengthens investor confidence.

An essential part of this commitment is protecting and promoting the rights that guarantee the social, political and economic stability of the country. It is essential to strengthen the foundations of the judicial system to ensure legal certainty. This includes strengthening **the judicial career**, critical for the independence of judges and justices. Improvements should range from the evaluation of their performance to the depoliticization of the Judicial Career Council to ensure a judicial power that is free from external influences.

Finally, it is critically important to expedite judicial processes. The recent passage of the Law on Electronic Processing of Judicial Records in 2022 is a significant step towards reducing judicial delays. This law is a very valuable opportunity to improve the efficiency of the Judicial Branch, benefiting both companies and society in general.

## The Competition Law: a step towards economic modernization

The need for a Competition Act in Guatemala, in line with our commitments to the European Union, is more urgent than ever. This law must be supported by a balanced regulatory framework that, at the same time, promotes legal certainty and fosters the country's economic advancement. Addressing competition regulations presents significant challenges, both technical and political.

The legislative process of the Competition Act has faced obstacles which have prevented passage of a law that equitably protects consumers and companies. Bill 6204, introduced on February 22, 2023, by the Ministry of Economy, seeks to “promote free competition to strengthen economic efficiency for the benefit of consumers.” This proposal, made up of 98 articles under eight titles, ranges from general provisions to sanctions and includes final provisions. However, critical discussions and analyses by Congress are still waiting.

AMCHAM has identified key aspects needing more discussion:

- The creation of a Competition Office under the Ministry of Economy presents concerns about its independence. A government agency should not have discretionary authority in cases of unfair competition.
- Insider information management and the right of access to public information need clarification to avoid abuses of discretion by the Competition Office.
- The right of clemency, although considered, lacks the details needed for its effective enforcement, especially in relation to the Criminal Code.
- The treatment of efficiency defense and excepted practices has not been sufficiently explored in the current bill.

These aspects are not yet properly aligned with Guatemalan laws in force, which leads to concerns of the efficacy of the proposed bill. An approach aligned with international models like the *Antitrust Act* of the United States could be more beneficial.

It is critically necessary to draft laws on competition that follow international best practices and promote business growth, without imposing unnecessary barriers.

## Road infrastructure: key for economic progress in Guatemala

Adequate road infrastructure is essential for commercial activities and to attract foreign investment to Guatemala. Currently, deficiencies in this area negatively affect basic basket costs and maintain high price levels. To improve Guatemala's competitiveness, it is essential to:

- Expand the highway network by 20,000 kilometers (12,000 miles)
- Improve the current 8,000-kilometer road network
- Increase the efficiency of port and border movements
- Invest at least USD 2.5 billion per year in infrastructure

A disquieting example is the Palín-Escuintla highway. After the end of the concession to Empresa Marhnos, S.A. in May 2023, the State has taken control, but maintenance has been poor. This highway is critical for the transportation of goods and for economic dynamism, so proper maintenance and administration are crucial.

The lack of trust in state agencies underscores the importance of public-private partnerships in service provision. Since the expiration of the contract with Marhnos, S.A., accident frequency and road deterioration have increased, highlighting the need to prioritize the maintenance of vital infrastructure for the market and to attract investment.

Additionally, Bill 5431, introduced in 2020 to establish a General Road Infrastructure Law, has yet to progress significantly in Congress. It is currently in the second discussion step. This law is crucial to align efforts with the 2018-2032 Road Development Plan and guarantee benefits for all Guatemalans.

Positive aspects of Bill 5431 are:

- A long-term binding national infrastructure plan
- Right of way update
- Proprietary and dynamic contracting process
- Use of unsolicited offers, a successful international mechanism
- Greater agility in licensing procedures
- Clear regulation for contract termination and the figure of an overseer
- Different forms of compensation to promote project efficiency

Certain aspects, however, need improving:

- The role of the Ministry of Communications, Infrastructure and Housing must be reassessed so as not to significantly reduce its capabilities
- The selection process for the SIVIAL board must be strengthened through a competitive selection process
- Fund regulation (for studies, rural development and emergencies) must be more specific to guarantee transparency and prevent corrupt acts
- The structure of the Road Infrastructure Advisory Council, although it is representative of several sectors, must avoid excessive bureaucracy .

This bill has the potential to reform the current institutional framework, paving the way to quality of public service improvement and underscoring the importance of regulating the right of way to protect private property rights.

## **Optimization of port infrastructure: an imperative for trade in Guatemala**

Ports are essential for logistics and trade in Guatemala, but we face significant competitiveness challenges in the port and cargo transportation sectors. It is critically necessary to have an efficient and modern port infrastructure to support the country's import and export flows. Port system efficiency depends on factors such as political

stability, legal certainty, and the streamlining of contractual processes, including the promotion of public-private partnerships.

Guatemala ranks 98th out of 141 countries in global competitiveness indices, reflecting challenges in efficiency and port services. In 2019, the quality of our port infrastructure received a rating of 24.5 out of 100. Critical issues include:

- Insufficient authority and lack of governance, which encourages illegal practices and favors vested interests
- Little competition among shipping companies
- Low efficiency and high processing costs
- Congestion in access to ports.

These problems underscore the urgent need to implement port operation and capacity improvement reforms. The lack of a unified and transparent port authority leads to divergent operational strategies and to corruption, which undermines sector efficiency and transparency.

Current port system regulations are outdated and require specific review targeting efficiency. In 2019, Bill 5545 was introduced for a Regulatory Law of the National Port System, proposing a more effective regulatory framework for the National Port Commission. Despite obtaining a favorable opinion, its legislative progress has been slow.

This initiative is crucial to develop and modernize the port system, including the creation of an independent port authority that establishes uniform strategies to improve infrastructure and foster public-private partnerships.

## The APM Terminals case

APM Terminals is the company that acquired the administration of Puerto Quetzal (EPQ) after the corruption case of possible bribes from the entity Terminal de Contenedores Quetzal (TCQ) to former officials of the Patriota government administration (2015). The Fifth Chamber of the Contentious Administrative Court hearing the case declared the nullity of the contract that allows APM to operate, which could abruptly interrupt container operator's work. This is a concern to exporters because EPQ is the most important port in Guatemala, transporting 45% of the total cargo of the country. APM is an international company whose shareholders are AP Moller Group (Maersk) and International Finance Corporation (IFC). Since APM Terminals is managing the terminal, the amount of time that ships remain at the port in Guatemala has dropped, which results in greater competitiveness. For this reason, the business sector has voiced the need to have a roadmap to ensure that the national port system will not be vulnerable to a crisis that may affect business groups.

## Nearshoring

Global circumstances have led to drastic changes in international trade, giving rise to business initiatives that seek to develop new methods to ensure a constant flow of goods and service exchanges in the Latin American region. Following various highly relevant events in recent years, such as the SARS-CoV-2 pandemic, the conflicts between Russia and Ukraine, and higher inflation in the United States due to factors such as supply chain disruptions and tensions with China, reviewing economic strategies has been encouraged.

The fundamental characteristic of *nearshoring* strategies lies, intrinsically but not exclusively, in the geographic proximity between the region or state hosting business headquarters and the countries involved. However, there are several aspects to consider for the successful implementation of this strategy. Among them, cultural, legal, time, political, knowledge, technology-related aspects, supply of raw materials and adaptation gaps, all of them essential for effective integration in any business sector.

Consequently, it is of utmost importance for the country to be able to accommodate demand for large investments that promote benefits for the population in general. In Guatemala, efforts have been made in this regard, with initiatives promoted by business chambers, foundations and other actors, which seek to improve infrastructure and address these aspects.

On February 14, 2023, the Minister of Economy and the Foreign Minister held a meeting with the senior advisor for Economic Affairs of the Office of the Vice President of the United States, to follow up on the *nearshoring* momentum and strengthen direct foreign investment attraction. As a result of this collaboration, a joint agreement was signed between Guatemala and the United States to promote it. Given that the United States is an ally and trade partner of Guatemala, in addition to being the headquarters of companies with significant investments in the Central American country, this collaboration acquires strategic value.

Undoubtedly, nearshoring initiatives and their implementation are essential for economic development and improvement in the country and the region. However, it is crucial to bear in mind that for this process to be effective and efficient, legal and institutional certainty, the combat of corruption and providing tax incentives are all essential requisites. These steps are essential to promote a free market and ensure the general prosperity of the population.