

USDA Foreign Agricultural Service

# GAIN Report

Global Agricultural Information Network

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## Guatemala

**Post:** Guatemala

### Guatemala to Change Tariff Lines for Chicken Leg Quarters

**Report Categories:**

Trade Policy Monitoring

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**Report Highlights:**

FAS Guatemala has learned that the Ministry of Economy (MINECO) will eliminate select tariff lines currently being used to import U.S. poultry leg quarters duty free outside of the CAFTA-DR Tariff Rate Quota (TRQ). This will force U.S. poultry to enter under an out-of-quota tariff of 12.5 percent. The policy change will affect over \$55 million of chicken leg quarter exports that the United States sends to Guatemala each year.

## **Executive Summary**

Currently, a small amount of U.S. chicken leg quarters enters Guatemala under a CAFTA-DR tariff rate quota which was set at 11,285 MT in 2015. However, more than 60,000 additional metric tons of U.S. CLQ entered outside of the TRQ that same year. The large volume of out-of-quota imports entered at zero duty due to what was paramount to an administrative error that gave Guatemalan importers access to tariff lines for U.S. chicken leg quarters with zero import duty. The Guatemalan government plans to correct the error in 2017.

As 2016 ends, Guatemalan poultry importers are anxious to see what MINECO will publish in the 2017 Harmonized Tariff Schedule. In conversations with SAT and MINECO contacts, FAS Guatemala confirmed the intention is to move the disputed tariff lines from the CAFTA-DR category of tariffs to the Central American Tariff System (SAC) category. Chicken leg quarter imports under the codes in SAC will incur an import duty of 15 percent. This means that U.S. leg quarters can only be imported under CAFTA-DR negotiated tariff lines 02071399B, or 02071499B; paying zero duty within the quota and 12.5 percent outside the quota.

## **Background**

The government, importers and poultry producers of Guatemala have an ongoing internal debate concerning the use of four HTS codes -- 0207.13.93, 0207.13.94, 0207.14.93 and 0207.14.94. These codes were created in 2006-2007 outside of CAFTA-DR negotiations and were originally designed for use for regional trade among Central American countries. These new codes were defined as poultry thighs, drumsticks and other pieces, including joined-together – which by definition is a chicken leg quarter. These tariff lines first appeared in 2008 with an import duty of 10.5 percent that decreased 1.5 percent annually. These tariff lines were never intended to be made available for use by importers of U.S. chicken leg quarters, but they were mistakenly published under the CAFTA-DR tariff category making them available for U.S. chicken leg quarters. The tariff lines went unused until 2012 and by January 1, 2015, the import duty of the disputed tariff lines reached zero percent, which was the year Guatemala imported a record volume of chicken leg quarters outside the CAFTA-DR quota. These tariff lines allowed importers to circumvent the CAFTA-DR TRQ.

In late 2015, Guatemala's Customs tax and import duty collection agency (SAT) recognized the mistake and began changing the classification of U.S. shipments of chicken leg quarters under tariff lines 02071493 and 02071494 (02071393 and 02071394 were never used) to the CAFTA-DR out-of-quota tariff line 02071499B, which incurred a 15 percent import duty. At the same time, SAT petitioned MINECO to change the Harmonized Tariff Schedule to eliminate the disputed tariff lines. On February 4, 2016, MINECO accommodated SAT's request and simply removed the codes from the MINECO posted tariff schedule on its web page, without any announcement, notification, or grace period for importers to make adjustments. This action had led to an immediate reduction of imports of U.S. chicken leg quarters outside of the CAFTA-DR TRQ. Importers complained and filed several lawsuits against MINECO and its officials. In June 2016, a Guatemalan Court ruled that MINECO did not have the authority to remove the codes since the Harmonized Tariff System is approved by Congress every year and can only be changed by Congress. The disputed codes in essence were then reestablished and U.S. leg quarters again entered Guatemala duty free, but only for the remainder of the calendar year.

## **Comment**

MINECO believes by changing the HTS access categories as part of the 2017 tariff schedule approved by Congress, instead of eliminating them altogether, it is complying with Guatemalan law and its trade agreement obligations. In this way, MINECO will not be subject to legal action taken by potentially impacted importers. Furthermore, under SAC, all third countries will pay an import duty of 15 percent. The SAC import duty will be greater than the U.S. out-of-quota duty of 12.5 percent. This all suggests that the change in policy will not violate Guatemala's CAFTA-DR or WTO obligations. However, USTR believes Guatemala does have an obligation to make a formal notification to the WTO as the trade impact of the policy change will be significant.

### **Trade Impact**

As mentioned above, in 2015, Guatemala imported a record 60,000 MT of U.S. chicken leg quarters out-of-quota. As of October 2016, Guatemala is on pace to import approximately 28 percent more leg quarters out-of quota utilizing the disputed duty-free tariff lines. If importers have to pay 12.5 percent for these imports in 2017, it is likely overall imports will decline and prices for chicken leg quarters will rise. In addition, the TRQ for leg quarters in 2017 will be reduced to 8,000 MT as per provisions under CAFTA-DR, further reducing U.S. imports imported at zero duty. The full impact on imports will not be known until the new policy is actually published, and importers and exporters make their pricing adjustments. MINECO usually publishes the Harmonized Tariff Schedule by December 15, 2016. FAS Guatemala was told the delay in publication is due to the change in chicken leg quarter tariff lines.