

HONDURAS

TRADE SUMMARY

The U.S. trade deficit with Honduras was \$565 million in 2004, an increase of \$78 million from \$486 million in 2003. U.S. goods exports in 2004 were \$3.1 billion, up 8.9 percent from the previous year. Corresponding U.S. imports from Honduras were \$3.6 billion, up 9.9 percent. Honduras is currently the 37th largest export market for U.S. goods.

The stock of U.S. foreign direct investment (FDI) in Honduras in 2003 was \$270 million, up from \$181 million in 2002. U.S. FDI in Honduras is concentrated largely in the manufacturing sector.

IMPORT POLICIES

Free Trade Agreement

The United States engaged in free trade agreement negotiations with five Central American countries (Costa Rica, El Salvador, Guatemala, Honduras, and Nicaragua) in 2003. The United States concluded negotiations with El Salvador, Guatemala, Honduras, and Nicaragua in December 2003 and with Costa Rica in January 2004. In May 2004, the six countries signed the United States – Central America Free Trade Agreement. During 2004, the United States and the Central American countries engaged in negotiations with the Dominican Republic to integrate that country into the free trade agreement. On August 5, 2004, the seven countries signed the Dominican Republic – Central America – United States Free Trade Agreement (CAFTA-DR). El Salvador ratified the Agreement in December 2004 and Honduras ratified in March 2005. Legislative approval is pending in the United States and the other signatories to the Agreement.

The CAFTA-DR will remove barriers to trade with and investment in the region and will further regional economic integration. The CAFTA-DR will also require the Central American countries and the Dominican Republic to undertake needed reforms to confront many of the problems noted below in areas including: customs administration; protection of intellectual property rights; services, investment, and financial services market access and protection; government procurement; sanitary and phytosanitary (SPS) barriers; and other non-tariff barriers.

Tariffs

Honduras' tariffs on most goods from outside the Central American Common Market (CACM) are currently within the zero to 15 percent range. Once the CAFTA-DR goes into effect, about 80 percent of U.S. industrial and commercial goods will enter the region duty-free, with the remaining tariffs phased out over ten years. Nearly all textile and apparel goods that meet the Agreement's rules of origin will be duty-free and quota-free immediately, promoting new

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opportunities for U.S. and regional fiber, yarn, fabric and apparel manufacturing. (The Agreement's tariff treatment for textile and apparel goods may be made retroactive to January 1, 2004.)

Honduras maintains a combination price band and absorption agreement for corn, grain sorghum, and corn meal. Under the price band mechanism, duties can vary from 5 percent to 45 percent, depending on the import price. The duty for these products drops to 1 percent if the end users agree to first purchase a predetermined amount of corn and sorghum from domestic farmers; otherwise, the higher tariffs of the price band mechanism remain in effect. The tariff reduction only takes place during non-harvest season (March through August), and only end-users who have previously signed the absorption agreement may apply for this preferential treatment. A similar absorption agreement exists for rough rice, with duties of 1 percent for signers of the agreement and 45 percent for everyone else. The United States has strongly opposed the Honduran policies on these grains as limiting access for U.S. agricultural products.

Under the CAFTA-DR, Honduras will eliminate its tariffs on nearly all agricultural products within 15 years (18 years for rice and chicken leg quarters and 20 years for dairy products). For the most sensitive products, tariff rate quotas will permit some immediate zero-duty access for specified quantities during the tariff phase-out period, which will expand over time. Honduras will liberalize trade in white corn through expansion of a TRQ. Accordingly, when implemented, the CAFTA-DR will lead to the elimination of market access barriers, including the price band and absorption agreement system, for all products other than white corn.

The Agreement also requires transparency and efficiency in administering customs procedures, including the CAFTA-DR rules of origin. Honduras committed to ensure greater procedural certainty and fairness in the administration of these procedures and all Parties agreed to share information to combat illegal transshipment of goods.

Honduras implemented the WTO Customs Valuation Agreement in February 2000.

STANDARDS, TESTING, LABELING, AND CERTIFICATION

Application of SPS requirements is sometimes lacking in transparency, resulting in uncertainty among U.S. suppliers and Honduran importers. The Honduran government requires that sanitary permits be obtained from the Ministry of Health for all imported foodstuffs, and that all processed food products be labeled in Spanish and registered with the Division of Food Control (DFC) of the Ministry of Health. A U.S. and a regional supermarket chain have complained that delays in the process of granting these permits have hampered their ability to import into Honduras. The Ministry of Health agreed to accelerate the process by focusing most closely on products considered to be at high risk for sanitary concerns (such as raw meat) and simplifying the procedures for low-risk products. However, during 2004, concerns remained: that these regulations were not being strictly enforced for Honduran competitors, and that imports into

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Honduras could grow significantly, with a more transparent and efficient process of granting sanitary permits.

In 2002 and 2003, Honduran importers had initial difficulty receiving permission to import turkey into Honduras, though permission was eventually granted. The Honduran government has also cited SPS concerns in periodically denying applications for the importation of pork and dairy products.

Since 2002, Honduras has imposed a ban on poultry products from a number of U.S. states, due to concerns over low-pathogenic avian influenza (LPAI). The ban was revised and renewed in March 2004 in spite of World Organization for Animal Health (OIE) guidelines that the presence of LPAI does not justify trade restrictions, and despite information provided to Honduran officials by the U.S. Department of Agriculture (USDA) indicating the dates on which testing was completed in the affected states. The USDA estimates that if Honduran restrictions on U.S. raw poultry and poultry parts were lifted, U.S. producers could export an additional \$10 million of poultry products to Honduras annually.

When the United States and Central America launched the free trade agreement negotiations, they initiated an active working group dialogue on SPS barriers to agricultural trade that met alongside the negotiations to facilitate market access. The objective was to leverage the impetus of active trade negotiations to seek difficult changes to the Central American countries' SPS regimes. Through the work of this group, Honduras has committed to resolve specific measures affecting U.S. exports to Honduras. In particular, for meat, dairy, and poultry, under CAFTA-DR Honduras will move toward recognizing import eligibility for all plants inspected under the U.S. food safety and inspection system.

GOVERNMENT PROCUREMENT

Honduras is not a party to the WTO Government Procurement Agreement. Under the Government Contracting Law, which entered into force in October 2001, all public works contracts over one million lempiras (approximately \$53,850 as of December 2004) must be offered through public competitive bidding. Public contracts between 500,000 and one million lempiras (\$26,925 and \$53,850) can be offered through a private bid, and contracts less than 500,000 lempiras (\$26,925) are exempt from the bidding process. Currently, to participate in public tenders, foreign firms are required to act through a local agent (at least 51 percent Honduran-owned).

While foreign firms are granted national treatment for public bids, some still complain of mismanagement and lack of transparency in the bid processes. One way that the government of Honduras has tried to improve transparency and fairness in government procurement is by contracting with the United Nations Development Program (UNDP) to manage procurement for an increasing number of ministries and state-owned entities. However, U.S. companies have expressed concerns about the way UNDP has managed major procurements for the government,

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such as complaints that bid requirements were written so narrowly that they favored a particular company from the outset and that UNDP management of invitation-only, limited-bid process, was not transparent.

The CAFTA-DR requires fair and transparent procurement procedures, including advance notice of purchases and timely and effective bid review procedures. Under the CAFTA-DR, U.S. suppliers will be permitted to bid on procurements covered by the Agreement for most Guatemalan government entities, including key ministries and state-owned enterprises on the same basis as Guatemalan suppliers. The anti-corruption provisions in the Agreement require each government to ensure that bribery in matters affecting trade and investment, including in government procurement, is treated as a criminal offense, or is subject to comparable penalties, under its law. In addition, the CAFTA-DR would eliminate the local agent requirement for participation in public tenders.

EXPORT SUBSIDIES

Honduras does not have export subsidies or export-promotion schemes other than the tax exemptions given to firms in free trade zones. Under the CAFTA-DR, Honduras may not adopt new duty waivers or expand existing duty waivers conditioned on the fulfillment of a performance requirement (e.g., the exportation of a given level or percentage of goods). Honduras may maintain existing duty waiver measures provided such measures are consistent with its WTO obligations.

INTELLECTUAL PROPERTY RIGHTS (IPR) PROTECTION

Honduras largely complied with the Trade Related Aspects of Intellectual Property Rights (TRIPs) Agreement by the January 1, 2000, deadline. In December 1999, the Honduran Congress passed two laws to reform previous legislation concerning copyrights, patents, and trademarks. However, the Honduran Congress has yet to pass laws governing the protection of integrated circuit designs and plant varieties. In the CAFTA-DR, Honduras agreed to ratify or accede to the International Convention for the Protection of New Varieties of Plants by January 1, 2006, or provide effective patent protection for plants by the date of entry into force of the agreement.

CAFTA-DR obligations will also strengthen Honduras' IPR protection regime to conform with, and in many areas exceed, WTO norms. CAFTA-DR obligations would also provide stronger deterrence against piracy and counterfeiting by criminalizing end user piracy and requiring Honduras to authorize the seizure, forfeiture, and destruction of counterfeit and pirated goods and the equipment used to produce them. The CAFTA-DR text also mandates both statutory and actual damages for copyright and trademark infringement, which would ensure that monetary damages can be awarded even when it is difficult to assign a monetary value to the violation.

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Copyrights

Honduras' copyright law, updated in 1999, added more than twenty different criminal offenses related to copyright infringement and established fines and suspension of services that can be levied against offenders. However, the piracy of books, sound and video recordings, compact discs, and computer software is still widespread in Honduras, due to limited enforcement capacity. A spot survey by an industry-sponsored IPR advocacy group found that nearly 75 percent of all compact discs for sale in Honduras' markets were pirated. U.S. software companies are also pushing for ministries and state-owned entities to ensure their own use of only authorized licensed software. A major U.S. software company has estimated that it loses \$5 million annually due to software piracy in Honduras.

The piracy of cable television signals is also a problem in Honduras. During 2004, two different U.S. companies claimed that their competitors were broadcasting pirated cable television signals from the United States, and that the Honduran authorities do not vigorously investigate and prosecute these activities. The CAFTA-DR enforcement provisions are designed to help reduce copyright piracy.

Patents and Trademarks

Honduras ratified the Paris Convention for the Protection of Industrial Property in 1994. The Honduran Congress enacted a 1999 Law of Industrial Property to provide improved protection for both trademarks and patents. To be protected under Honduran law, patents and trademarks currently must be registered with the Ministry of Industry and Trade. The CAFTA-DR will eliminate cumbersome registration requirements.

Modifications to the Patent Law of 1993 included patent protection for pharmaceuticals, and extension of the term of protection for a patent from seventeen to twenty years from the date of filing, to meet WTO standards. The term for cancellation of a trademark for lack of use was extended from one year to three years. Trademarks are valid for up to ten years from the registration date. The illegitimate registration of well-known trademarks has, however, been a persistent problem in Honduras. The CAFTA-DR enforcement provisions are designed to help reduce trademark infringement.

A major concern for U.S. pharmaceutical and agricultural chemical companies is the lack of effective data protection in Honduras for undisclosed test data submitted for the marketing approval of a pharmaceutical or agricultural chemical product. Implementation of CAFTA-DR obligations will ensure adequate and effective protection of such data from disclosure and unfair commercial use.

SERVICES BARRIERS

Currently, special government authorization must be obtained to invest in the tourism, hotel, and banking services sectors. Foreigners may neither hold a seat on, nor provide direct brokerage services in, Honduras' stock exchange. Honduran professional bodies heavily regulate the licensing of foreigners to practice law, medicine, engineering, accounting, and other professions.

Under the CAFTA-DR, Honduras will accord substantial market access in services across their entire services regime, subject to very few exceptions. In addition, U.S. financial service suppliers would have full rights to establish subsidiaries, joint ventures or branches for banks and insurance companies. Honduras will allow U.S.-based firms to offer cross-border services in areas such as financial information and data processing, and financial advisory services. In addition, Honduran mutual funds will be able to use foreign-based portfolio managers. The right to provide professional services will be granted on a reciprocal basis depending on the requirements in individual U.S. states.

INVESTMENT BARRIERS

Currently, the government of Honduras must approve any foreign investment in sectors including telecommunications, basic health, air transport, insurance and financial services, private education, and most sectors related to natural resources and farming. Foreigners are barred from small-scale commercial and industrial activities with an investment less than 150,000 lempiras (about \$8,078). Foreign ownership of land within 40 km of the coastlines and national boundaries is constitutionally prohibited, although tourism investment laws allow for certain exceptions. Inadequate land title procedures, including overlapping claims and a weak judiciary, have led to numerous investment disputes involving U.S.-citizen landowners.

In 2001, a Bilateral Investment Treaty (BIT) between the United States and Honduras entered into force. The treaty provides, among other things, for equal protection under the law for U.S. investors, with limited exceptions, and permits expropriation only in accordance with international legal standards and accompanied by adequate compensation. U.S. investors in Honduras also have the right to submit an investment dispute to binding international arbitration.

Under current Honduran law, the government-owned telephone company Hondutel maintains monopoly rights over all fixed-line telephony services. However, in 2003 the government began to allow foreign investors to participate in fixed-line telephony services as "sub-operators" in partnership with Hondutel. At present, approximately 40 firms have entered into "sub-operator" contracts with Hondutel, of which five firms are already providing services to the public. By law, Hondutel's monopoly expires in December 2005, and the government of Honduras has announced plans for full privatization of Hondutel thereafter. Both foreign and domestic firms already enjoy full rights to invest in cellular telephony services.

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In July 2004, the Minister of Natural Resources and the Environment issued a decree calling for a new national policy on mining and ordered the government agency responsible for granting mining permits and concessions, DEFOMIN, to stop granting any new mining concessions. This review is ongoing and has blocked plans of some U.S. investors, including the expansion plans of a U.S. company operating in Honduras, which is experiencing a delay in obtaining an environmental permit necessary to operate.

Under the CAFTA-DR, U.S. investors will enjoy in almost all circumstances the right to establish, acquire and operate investments in Honduras on an equal footing with local investors. In the investment chapter of the CAFTA-DR, Honduras will commit to provide a higher level of protection for U.S. investors than under the existing BIT. Among the rights afforded to U.S. investors are due process protections and the right to receive a fair market value for property in the event of an expropriation. Investor rights will be backed by an effective, impartial procedure for dispute settlement that is fully transparent. Submissions to dispute panels and panel hearings will be open to the public, and interested parties will have the opportunity to submit their views. The CAFTA-DR requires that all forms of investment be protected, including enterprises, debt, concessions, contracts and intellectual property. Upon entry into force of the CAFTA-DR, the BIT will be suspended. For a period of 10 years, however, current U.S. investors may choose either dispute settlement under the BIT or the FTA.

ELECTRONIC COMMERCE

Honduras currently has no domestic legislation concerning electronic commerce, as the sector is still not developed in the Honduran market. The Electronic Commerce System Directorate (DISELCO), a joint project of the Chamber of Commerce and Industry of Tegucigalpa (CCIT), the Chamber of Commerce and Industry of Cortés (CCIC), and the National Industry Association (ANDI), is the institution in charge of establishing the policies and norms pertaining to electronic commerce in Honduras.

Although improving, the country still lacks adequate basic telecommunications infrastructure and Internet bandwidth capacity to effectively support significant electronic commerce. Except for web page promotional material, companies are not utilizing computer-based sales as a substantial distribution channel in Honduras.

The CAFTA-DR includes provisions on electronic commerce that reflect the issue's importance in global trade and the importance of supplying services by electronic means as a key part of a vibrant electronic commerce environment. Under the Agreement, Honduras has committed to provide non-discriminatory treatment of digital products and not to impose customs duties on such products and to cooperate in numerous policy areas related to electronic commerce.

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OTHER BARRIERS

Historically, U.S. firms and private citizens have found corruption to be a problem which seriously complicates doing business in Honduras. Corruption appears to be most prevalent in the areas of government procurement, the buying and selling of real estate, particularly land title transfers, performance requirements, and the regulatory system. Honduras' judicial system is subject to influence, and the resolution of investment and business disputes involving foreigners is largely non-transparent. With considerable U.S. help, the government is reforming Honduras' judicial system and fighting corruption, though progress has been very slow and serious problems remain. During 2004, Honduras had the distinction of being chosen as eligible to apply for Millennium Challenge Account (MCA) assistance. MCA countries are deemed to have shown a commitment to ruling justly (including by tackling corruption), investing in their people, and encouraging economic freedom. The anti-corruption provisions in the CAFTA-DR require each government to ensure that bribery in matters affecting trade and investment is treated as a criminal offense, or is subject to comparable penalties, under its law.

Anti-Competitive Practices

U.S. industry has expressed concern that investors who set up business in Honduras have at times found themselves subject to forms of competition that, in the United States, would be considered anticompetitive. In 2003, a U.S.-Japanese joint venture established a cement company in Honduras, challenging the duopoly enjoyed by the two Honduran companies in the market. The new joint venture investment was critical of the two established companies accusing them of predatory pricing that brought cement prices below the cost of production. After the U.S.-Japanese venture dropped out of the market, prices returned to their earlier level. There is currently no law against predatory pricing in Honduras. However, a draft competition law, which would address certain types of anti-competitive behavior, is currently before a congressional committee.

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