HONDURAS

TRADE SUMMARY

The U.S. goods trade deficit with Honduras was $506 million in 2005, a decrease of $55 million from $562 million in 2004. U.S. goods exports in 2005 were $3.2 billion, up 5.4 percent from the previous year. Corresponding U.S. imports from Honduras were $3.8 billion, up 3.0 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 2004 was $339 million, up from $262 million in 2003. U.S. FDI in Honduras is concentrated largely in the manufacturing sector.

IMPORT POLICIES

Free Trade Agreement

The United States concluded free trade agreement 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 integrated the Dominican Republic 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).

All of the signatory countries except Costa Rica have ratified the agreement. CAFTA-DR will enter into force between the United States and other signatories on a rolling basis as the United States determines that countries have taken sufficient steps to implement their commitments under the Agreement.

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

Tariffs

Honduras' tariffs on most goods from outside the Central American Common Market (CACM) are currently within the zero percent 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 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, import 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 the 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 (TRQ) will permit some immediate duty-free 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.

Non-Tariff Measures

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

Food imports into Honduras could grow significantly with a more transparent and efficient process of granting sanitary permits. 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. The Ministry of Health agreed to expedite this surveillance 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. Concerns remain, however, that regulations are not being strictly enforced for Honduran businesses. The Honduran government has also cited SPS concerns in periodically denying applications for the importation of pork, poultry, 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. 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. In response to Mexico's October 2005 decision to lift its ban on poultry from nine U.S. states where LPIA was previously detected, the Honduran Ministry of Agriculture agreed to lift Honduras' ban as well. However, no date has been announced for lifting the ban.

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 in conjunction with the negotiations to facilitate market access. The objective was to leverage the impetus of active trade negotiations to make changes to the Central American countries' SPS regimes. Through the work of this group, Honduras committed to resolve specific measures affecting U.S. exports to Honduras. In particular, under CAFTA-DR, Honduras will recognize the equivalence of the U.S. food safety and inspection system for meat, poultry, and dairy, thereby eliminating the need for plant-by-plant inspections.

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 that is 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 a number of ministries and state-owned entities. However, in some cases, however, U.S. companies have expressed concerns about the way UNDP has managed major procurements for the government, including 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 the use of fair and transparent procurement procedures, including advance notice of purchases and timely and effective bid review procedures, for procurement covered by the Agreement. Under the CAFTA-DR, U.S. suppliers will be permitted to bid on procurements of most Honduran government entities, including key ministries and state-owned enterprises. 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.

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 took action to implement 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. The Honduran Congress, however, 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 1991 Act of the International Convention for the Protection of New Varieties of Plants by January 1, 2006.

Implementation of CAFTA-DR obligations would strengthen Honduras' IPR protection regime. Implementation of those obligations would also provide stronger deterrence to 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, to help ensure that monetary damages can be awarded even when it is difficult to assign a monetary value to the violation. Finally, under current laws, prosecutors can only confiscate pirated goods when the affected company files a complaint. After CAFTA-DR is implemented, prosecutors will be able to confiscate pirated goods and file intellectual property cases "*ex-officio*" or on their own initiative.

Copyrights

Honduras's 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 Honduran markets were pirated. U.S. software companies are also pushing for ministries and state-owned entities to ensure that they use 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 has also been 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 were not vigorously investigating and prosecuting these activities. The CAFTA-DR enforcement provisions are designed to help reduce copyright piracy.

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 associations heavily regulate the licensing of foreigners to practice law, medicine, engineering, accounting, and other professions.

Under the CAFTA-DR, Honduras will allow substantial market access in services across their entire services regime, subject to very few exceptions. In addition, U.S. financial service suppliers will have full rights to establish subsidiaries, joint ventures or branches for banks and insurance companies. Also, 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.

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.

Until December 2005, the government-owned telephone company Hondutel maintained monopoly rights over all fixed-line telephony services. However, in 2003 the government began to allow foreign investors to participate in fixed-line telephone 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 expired in December 2005, but as of March 2006, the Government of Honduras had not yet passed a new telecommunications law that will allow new market entrants to operate independently or to invest as strategic partners in Hondutel. At present there are no plans for full privatization of the parastatal firm. Both foreign and domestic firms already enjoy full rights to invest in cellular telephone services. The Ministry of Natural Resources and Environment at times delays the issuance of environmental permits for U.S. and domestic investors, despite continued pressure from the United States Government to decide on these permits in a transparent and timely manner. 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 has cancelled an $8 million investment in the mining sector due to this delay. The U.S. government is aware of other investment delays in the mining, housing, and renewable energy sectors, due to ongoing reviews and non-issuance of their environmental permits. Environmental permits often take more than a year for issuance, after the submission of a complete application.

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. 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. 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.

OTHER BARRIERS

Historically, U.S. firms and private citizens have found corruption to be a problem which has seriously complicated doing business in Honduras. Corruption has appeared 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. Currently, with considerable U.S. help, the Honduran government is reforming the judicial system and fighting corruption; however, progress has been very slow and serious problems remain. In April 2004, Honduras was chosen as eligible to apply for Millennium Challenge Account (MCA) assistance. In June 2005, the Government of Honduras and the Millennium Challenge Corporation signed a program compact for $215 million. 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. For example, 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 accused the two established companies of predatory pricing that brought local cement prices below the cost of production. After the U.S.-Japanese venture dropped out of the market, prices leapt up to well above their previous level, until they were subsequently regulated by GOH action. Steel prices are also fixed in Honduras, and on a regional basis there are reports of price collusion by the major steel producers. In fall of this year, the Competition Law was passed which regulates against predatory pricing and other monopolistic practices in Honduras, but it will take some time for this law (and the GOH institutions that support it) to come fully into effect.