

HONDURAS

TRADE SUMMARY

The U.S. goods trade balance with Honduras went from a trade deficit of \$30 million in 2006 to a trade surplus of \$551 million in 2007. U.S. goods exports in 2007 were \$4.5 billion, up 21 percent from the previous year. U.S. imports from Honduras were \$3.9 billion, up 5.2 percent over the corresponding period. Honduras is currently the 38th largest export market for U.S. goods.

The stock of U.S. foreign direct investment (FDI) in Honduras was \$517 million in 2006 (latest data available), up from \$367 million in 2005. U.S. FDI in Honduras is concentrated largely in the manufacturing sector.

IMPORT POLICIES

Free Trade Agreement

On August 5, 2004, the United States signed the Dominican Republic-United States-Central America Free Trade Agreement (CAFTA-DR or Agreement) with five Central American countries (Costa Rica, El Salvador, Guatemala, Honduras, and Nicaragua) and the Dominican Republic.

During 2006, the Agreement entered into force for the United States, El Salvador, Guatemala, Honduras, and Nicaragua. The CAFTA-DR entered into force for the Dominican Republic on March 1, 2007. Costa Rica approved the CAFTA-DR through a national referendum on October 7, 2007, but the Agreement has not entered into force for Costa Rica as it has not yet completed the process of adopting implementing legislation and regulations.

In 2007, the Parties agreed to amend several textile related provisions of the CAFTA-DR, including, in particular, changing the rules of origin to require the use of U.S. or regional pocket bag fabric in originating apparel. The textile amendments have not entered into force.

Under the Agreement, the Parties agree to remove barriers to trade and investment in the region, which will strengthen regional economic integration. The CAFTA-DR also includes important disciplines relating to: customs administration and trade facilitation, technical barriers to trade, government procurement, investment, telecommunications, electronic commerce, intellectual property rights, transparency, and labor and environmental protection.

Tariffs

As a member of the Central American Common Market, Honduras agreed in 1995 to reduce its common external tariff to a maximum of 15 percent.

Under the CAFTA-DR, about 80 percent of U.S. industrial and consumer goods now enter Honduras duty free, with the remaining tariffs phased out over 10 years, starting in 2006. Nearly all textile and apparel goods that meet the Agreement's rules of origin now enter duty free and quota free, promoting new opportunities for U.S. and regional fiber, yarn, fabric, and apparel manufacturing companies.

Under the CAFTA-DR, more than half of U.S. agricultural exports now enter Honduras duty free. Honduras will eliminate its remaining tariffs on nearly all agricultural products within 15 years (18 years

for rice and chicken leg quarters and 20 years for dairy products). For certain products, tariff-rate quotas (TRQs) will permit some immediate duty free access for specified quantities during the tariff phase out period, with the duty free amount expanding during that period. Honduras will liberalize trade in white corn through expansion of a TRQ, rather than by tariff reductions.

Honduras and the other Parties have agreed to improve transparency and efficiency in administering customs procedures, including the CAFTA-DR rules of origin. Under the CAFTA-DR, Honduras committed to ensure greater procedural certainty and fairness in the administration of these procedures, and all the CAFTA-DR countries agreed to share information to combat illegal transshipment of goods. In the early months of the CAFTA-DR, a small number of U.S. exporters experienced delays in their product clearing Honduran customs, due to confusion over classification procedures. Honduras implemented the World Trade Organization (WTO) Customs Valuation Agreement in February 2000.

Nontariff Measures

The Directorio Ejecutivo de Ingresos (DEI), the Honduran customs and tax authority, has taken over verification of origin certifications from the Ministry of Industry and Trade. DEI verifies that the origin certifications from producers, exporters, or importers comply with the minimum requirements according to the CAFTA-DR and other treaties. In the past, some U.S. exporters had experienced delays due to confusion between “proveniencia” (the item was coming from the United States) and “pocedencia” (the item was made in the United States), but this problem appears to have been remedied.

STANDARDS, TESTING, LABELING, AND CERTIFICATION

All imported foodstuffs must be registered with the Sanitary Regulations Directorate (previously the Division of Food Control), after which a sanitary registration number is issued. All products (except samples used to obtain the registration number) must have this identification prior to entering the country. In addition, products cannot be imported with only an English language label. Stick-on labels in Spanish are allowed for product information, but not for manufacturing information or expiration date. Labels must be affixed prior to customs clearance and at the time of product registration.

The Ministry of Health has expedited the surveillance process by focusing most closely on products considered to be a high risk for sanitary concerns, such as raw meat, and simplifying the procedures for low risk products. Regulations appear to be evenly enforced for both U.S. and Honduran producers. From 2002 to mid-year 2006, Honduras imposed a ban on poultry products from a number of U.S. states, due to concerns over low pathogenic avian influenza. The ban was lifted in June 2006 and has not since been reinstated.

During the CAFTA-DR negotiations, the governments created an intergovernmental working group to discuss Sanitary and Phytosanitary barriers to agricultural trade. Through the work of this group, Honduras committed to resolving specific measures affecting U.S. exports to Honduras. For example, Honduras now recognizes the equivalence of the U.S. food safety and inspection systems for meat and poultry, and in so doing has eliminated the need for plant-by-plant inspection.

Honduras and the other Central American countries are in the process of developing common standards for the importation of various products, which may facilitate trade.

GOVERNMENT PROCUREMENT

Under the 2001 Government Contracting Law, all public works contracts over 1 million lempiras (approximately \$53,000 as of December 2007) must be offered through public competitive bidding.

Public contracts between 500,000 and 1 million lempiras (\$26,500 and \$53,000) can be offered through a private bid, and contracts less than 500,000 lempiras (\$26,500) are exempt from the bidding process.

The CAFTA-DR requires procuring entities to use fair and transparent procurement procedures, including advance notice of purchases and timely and effective bid review procedures, for procurements covered by the Agreement. Under the CAFTA-DR, U.S. suppliers are permitted to bid on procurements of most Honduran government entities, including most key ministries and other government entities, on the same basis as Honduran suppliers. The anticorruption provisions in the CAFTA-DR require each government to ensure under its domestic law that bribery in matters affecting trade and investment, including government procurement, is treated as a criminal offense, or is subject to comparable penalties. However, Honduras has not demonstrated the willingness or ability to investigate and prosecute these types of crimes.

Honduras is not a signatory to the WTO Agreement on Government Procurement.

EXPORT SUBSIDIES

Honduras does not have 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 that are conditioned on the fulfillment of a performance requirement (*e.g.*, the exportation of a given level or percentage of goods). However, Honduras may maintain such duty waiver measures for such time as it is an Annex VII country for the purposes of the WTO Agreement on Subsidies and Countervailing Measures (SCM Agreement). Thereafter, Honduras must maintain any such measures in accordance with Article 27.4 of the SCM Agreement.

INTELLECTUAL PROPERTY RIGHTS (IPR) PROTECTION

In early 2006, Honduras strengthened its legal framework for the protection of IPR with the passage of new laws in preparation for the entry into force of CAFTA-DR. However, implementing regulations for these new laws, as well as for IPR legislation adopted in 1999, had yet to be put in force as of November 2007. The CAFTA-DR provides for improved standards for the protection and enforcement of a broad range of IPR, which are consistent with U.S. and international standards of protection and enforcement as well as with emerging international standards. Such improvements include state-of-the-art protections for digital copyrighted products such as U.S. software, music, text, and videos; stronger protection for U.S. patents, trademarks, and test data, including an electronic system for the registration and maintenance of trademarks; and further deterrence of piracy and counterfeiting.

Honduran authorities need to dedicate the personnel and resources necessary to wage a truly effective campaign against IPR infringement. The prosecutor's office currently contains just two staff members. Although these prosecutors have the ability to seize pirated and counterfeit goods when found, they do not have the ability to prosecute the case without a formal written complaint from an injured party. This complicates and prolongs an already lengthy judicial process. That process also needs far greater transparency. Numerous trademark cases are pending in Honduran courts, including one involving the unauthorized use of the Chili's restaurant trademark that has been in the Honduran judicial system for several years. There are also numerous allegations that Honduran cable TV operators are using copyrighted U.S. programming without permission. Overall, lawyers and judges sometimes lack training in IPR matters, particularly with regard to evidence gathering and keeping statistics on prosecution of IPR crimes. Criminal prosecution efforts are difficult to evaluate since the victims of these crimes almost always settle at the administrative court level.

SERVICES BARRIERS

Until December 2005, the government owned telephone company Hondutel maintained monopoly rights over all fixed line telephony services. In 2003, the government began to allow foreign investors to participate in fixed line telephony services as “sub-operators” in partnership with Hondutel. Approximately 40 firms since then have entered into “sub-operator” contracts with Hondutel. Despite the purported elimination of its monopoly, the lack of a legal framework for granting concessions has left investors unsure of whether they may legally establish as fully independent service providers. Hondutel currently charges the highest international termination rates in the region.

Both foreign and domestic firms invest in cellular telephony services. In 2006, Hondutel awarded itself the third of three cellular licenses on a noncompetitive basis. A fourth license is scheduled to be awarded in early 2008, with four international firms prequalified to bid.

The Honduran Congress has been debating new telecommunications legislation for over a year that would require congressional approval for each new license to operate mobile or long-distance services. The United States has expressed concerns over this proposal and over indications that Honduras intends to open sectors only “gradually.”

INVESTMENT BARRIERS

The CAFTA-DR establishes a more secure and predictable legal framework for U.S. investors operating in Honduras. Under the CAFTA-DR, all forms of investment are protected, including enterprises, debt, concessions, contract, and intellectual property (IP). U.S. investors enjoy, in almost all circumstances, the right to establish, acquire, and operate investments in Honduras on an equal footing with local investors. Among the rights afforded to U.S. investors are due process protections and the right to receive fair market value for property in the event of an expropriation. Investor rights are protected under the CAFTA-DR by an impartial procedure for dispute settlement that is fully transparent and open to the public. Submissions to dispute panels and dispute panel hearings will be open to the public, and interested parties will have the opportunity to submit their views. Under the CAFTA-DR, the existing United States-Honduras Bilateral Investment Treaty will be suspended after a period of 10 years. Investors will continue to maintain important investment rights and protections under the investment provisions of the CAFTA-DR.

The CAFTA-DR eliminated a requirement that foreign firms act through a local agent that was at least 51 percent Honduran owned; however, Honduras still must authorize foreign investment in the health, air transport, terrestrial transport, education, natural resources, farming, and fuel sectors. These sectors still must have a Honduran national as a local agent, or act through companies that are at least 51 percent Honduran owned.

Foreign ownership of land within 40 kilometers 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. nationals who are landowners. In addition, the lack of implementing regulations in certain regions can lead to long delays in the awarding of titles.

ELECTRONIC COMMERCE

The CAFTA-DR includes provisions on electronic commerce that reflect its importance to global trade. Under the CAFTA-DR, Honduras has committed to provide nondiscriminatory treatment of digital products, and not to impose customs duties on digital products transmitted electronically. 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, a joint project of the Chamber of Commerce and Industry of Tegucigalpa, the Chamber of Commerce and Industry of Cortes, and the National Industry Association, is the institution in charge of establishing the policies and norms pertaining to electronic commerce in Honduras. The Directorate is currently in the process of developing legislation.

Although the infrastructure in Honduras is 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.

OTHER BARRIERS

U.S. firms and citizens have found corruption to be a serious problem in Honduras. In 2007, Transparency International ranked Honduras 131st out of 177 countries on corruption indicators and Honduras fell below the median on the World Bank Institute's "Control of Corruption" indicator. Honduras is now developing a corruption remediation plan, which includes elements such as civil service reform, external audits of public utilities (especially electricity and telecommunications), strengthening police capabilities, and implementation of the transparency law.

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. Telecommunications and energy are the areas that have proved most worrisome. Honduras's judicial system is allegedly subject to outside influence, and the resolution of investment and business disputes involving foreigners is largely nontransparent.

ANTICOMPETITIVE PRACTICES

U.S. industry has expressed concern that investors who set up business in Honduras have at times found themselves subject to practices that, in the United States, might be considered anticompetitive. There have been allegations that on a regional basis the major steel producers have engaged in price collusion. In 2006, the Honduran government passed a Competition law, establishing an anti-trust enforcement commission to combat such abuses. The government has now named the commissioners to the new commission and the commission was operational in 2007.