

# HONDURAS

## TRADE SUMMARY

In 2003, the U.S. trade deficit with Honduras was \$467 million, a decrease of \$224 million from deficit of \$690 million in 2002. U.S. goods exports to Honduras were \$2.8 billion, an increase of \$274 million from \$2.6 billion in 2002. Corresponding U.S. imports from Honduras were \$3.3 billion in 2003, up \$50 million from 2002. Honduras is currently the United States' 32<sup>nd</sup> largest export market.

The stock of U.S. foreign direct investment (FDI) in Honduras in 2002 amounted to \$184 million, down 24 percent from 2001. U.S. FDI is concentrated largely in the manufacturing sector.

## IMPORT POLICIES

### Free Trade Agreement

The United States and four Central American countries (El Salvador, Guatemala, Honduras, and Nicaragua) concluded negotiations on the U.S.-Central American Free Trade Agreement (CAFTA) in December 2003. The United States and Costa Rica on January 25 finalized Costa Rica's participation in the CAFTA. The United States and the Dominican Republic concluded market access negotiations in March 2004 to integrate the Dominican Republic into the CAFTA. The CAFTA will not only liberalize bilateral trade between the United States and the region, but will also further integration efforts among the countries of Central America, removing barriers to trade and investment in the region by U.S. companies. The CAFTA will also require the countries of Central America to undertake needed reforms to alleviate many of the systemic problems noted below in areas including customs administration; protection of intellectual property rights; services, investment, and financial services market access and protection; government procurements; sanitary and phytosanitary (SPS) barriers; other non-tariff barriers; and other areas.

### Tariffs

In 1995, Honduras and other members of the Central American Common Market (CACM) agreed to reduce and harmonize the common external tariff (CET) at zero to 15 percent, but allowed each member to determine the timing of the reductions. In 2002, Honduras lifted tariffs on capital goods and raw materials (including those used for manufacture of pharmaceutical products and agricultural inputs) for those imports produced outside of the CACM. Additionally, tariffs on most non-CACM intermediate goods were reduced to 10 percent, and final goods were reduced to 15 percent. Per the tax reform law of 2002, import tariffs on cars were reduced from 40 percent to 15 percent ad valorem, and a tariff based on engine size was eliminated. Once the CAFTA goes into effect, about 80 percent of U.S. industrial and commercial goods will enter Honduras duty free, with the remaining tariffs on such goods being eliminated within ten years.

In October 2003, the Government of Honduras increased tariffs to CACM common external tariff levels on thirty specific dairy products, including milk and powdered milk, sour cream, yogurt, some cheeses, butter, and ice cream. For most of the products, the tariffs were raised from 15 percent to 35 percent, the maximum allowable tariff rate under Honduras' WTO commitments. Under the CAFTA, tariffs on dairy products will be phased out over a 20-year period.

Honduras implements a price band mechanism for imports of yellow corn, sorghum, and corn meal. Imports entering with values within the defined band are assessed a 20 percent tariff, while imports with prices above the band are assessed duties at a rate lower than 20 percent, according to a schedule; those imports priced below the band are assessed a tariff higher than 20 percent, also according to a schedule.

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The government also maintains a seasonal restriction on the price band. Implementation of the CAFTA will require Honduras to eliminate the price band system.

In addition to the above, the Government of Honduras, farm groups, and importers have agreed to a quasi-tariff-rate quota in which the price band remains in effect until local grain supplies are exhausted, after which a one percent duty is applied to imports. Another quasi-tariff-rate quota system is in place for imports of rice. The United States has strongly opposed the Honduran policies on these grains as limiting access for U.S. agricultural products. When implemented, the CAFTA will lead to the elimination of this system. Tariffs on most grains and flour will be eliminated within 15 years after the agreement takes effect, except for rice tariffs, which will be phased out over 18 years. Under the CAFTA, textiles and apparel will be duty-free and quota-free immediately if they meet the Agreement's rule of origin, promoting new opportunities for U.S. and Central American fiber, yarn, fabric and apparel manufacturing.

The CAFTA will eliminate tariffs on virtually all agricultural products within a maximum of fifteen years (dairy in 20 years and poultry in 18). The Agreement also requires transparency and efficiency in administering customs procedures, including the CAFTA rules of origin. Honduras committed to ensure procedural certainty and fairness and all parties agree to share information to combat illegal transshipment of goods.

Honduras implemented the WTO Customs Valuation Agreement in February 2000.

### **STANDARDS, TESTING, LABELING AND CERTIFICATION**

Honduras maintains a ban on some U.S. raw poultry imports, based on sanitary and phytosanitary (SPS) concerns. The U.S. Department of Agriculture 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.

Application of sanitary and phytosanitary requirements is lacking in transparency, and changes in SPS requirements are seldom reported to the WTO as required, resulting in uncertainty among U.S. suppliers and Honduran importers. In 2002 and 2003, Honduran importers had initial difficulty in receiving permission to import turkey into Honduras, though in each year permission was eventually granted. The Honduran government has also cited SPS concerns in periodically denying applications for the importation of pork and dairy products. Honduras committed during the CAFTA negotiations to resolve these issues (see below).

The Honduran government requires that sanitary permits be obtained from the Ministry of Health for all imported foodstuffs. During 2003, a U.S. supermarket chain complained that delays in the process of granting these permits were hampering the company's ability to import its products 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. Honduran law also requires that all processed food products be labeled in Spanish and registered with the Division of Food Control (DFC) of the Ministry of Health.

Under the CAFTA, Honduras agreed to apply the science-based disciplines of the WTO Agreement on Sanitary and Phytosanitary Measures, and will move toward recognizing export eligibility for all plants inspected under the U.S. food safety and inspection system. Through the work of this group, additional commitments to resolve specific unjustified measures restricting trade between Honduras and the United States have also been agreed. When the United States and Central America launched the CAFTA negotiations, they initiated an active working group dialogue on SPS barriers to agricultural trade that met

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alongside the negotiations to facilitate market access. The objective was to leverage the impetus of active trade negotiations to seek difficult changes to the countries' SPS regimes. The SPS Working Group remains committed to continue working on resolution of outstanding issues even after the negotiations concluded.

### 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 (\$55,690) must be offered through public competitive bidding. Public contracts between 500,000 and one million lempiras (\$27,845 and \$55,690) can be offered through a private bid, and contracts less than 500,000 lempiras (\$27,845) 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). The CAFTA eliminates this requirement.

While foreign firms are granted national treatment for public bids, some still complain of mismanagement and lack of transparency in the bid processes. The Government of Honduras has tried to improve transparency and fairness in government procurement by hiring the United Nations Development Program (UNDP) to manage procurement for an increasing number of ministries and state-owned entities. However, U.S. companies have still expressed concern about the way the state telecommunication company Hondutel and UNDP have been managing major procurement projects.

Under the CAFTA, U.S. suppliers will be granted non-discriminatory rights to bid on contracts from most Central American government entities, including key ministries and state-owned enterprises. The CAFTA requires fair and transparent procurement procedures, such as advance notice of purchases and timely and effective bid review procedures. The CAFTA's anti-corruption provisions ensure that bribery in trade-related matters, including in government procurement, is specified as a criminal offense under Central American and U.S. laws.

### EXPORT SUBSIDIES

Honduras does not have export subsidies or export-promotion schemes other than the tax exemptions given to firms in free trade zones. The CAFTA will require the elimination of WTO-illegal export subsidies.

### INTELLECTUAL PROPERTY RIGHTS (IPR) PROTECTION

Honduras has significantly improved consistency with the TRIPS Agreement through legal revisions enacted in December 1999. However, the Honduran Congress must still pass laws governing the design of integrated circuits and plant variety protection.

Honduras is a member of the World Intellectual Property Organization (WIPO) since 1983. Honduras and the United States initialed a Bilateral Intellectual Property Rights (IPR) Agreement in March 1999, but both parties decided to fold the provisions into the CAFTA, which, once implemented, will strengthen intellectual property rights protection in all areas. Honduras became party to the WIPO Copyright Treaty (WCT) and the WIPO Performances and Phonogram Treaty (WPPT) in May 2002.

CAFTA provisions will strengthen Honduras' IPR protection regimes to conform with, and in many areas exceed, WTO norms and will criminalize end-user piracy, providing a strong deterrence against piracy and counterfeiting. The CAFTA will require all member countries to authorize the seizure, forfeiture, and destruction of counterfeit and pirated goods and the equipment used to produce them. It will also

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mandate both statutory and actual damages for copyright infringement and trademark piracy. This serves as a deterrent against piracy, and ensures that monetary damages can be awarded even when it is difficult to assign a monetary value to the violation.

### 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 in part to limited enforcement capacity. U.S. companies are concerned that recent attempts to prosecute computer software infringement cases have been met with resistance by officials in the Ministry of Industry and Trade's IPR Division and the Attorney General's office. U.S. software companies are currently focusing on legalization of pirated software used in some ministries and state-owned entities. A major U.S. software company estimates that it loses \$5 million annually due to software piracy in Honduras. The CAFTA 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 will eliminate cumbersome registration requirements.

Recent modifications to the Patent Law of 1993 include patent protection for pharmaceuticals, and extend 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 has been 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 enforcement provisions are designed to help reduce trademark piracy.

U.S. pharmaceutical companies have complained that the Ministry of Health, in approving a competing company's pharmaceutical product, has often failed to respect their data exclusivity rights as guaranteed under article 39 of the WTO TRIPs agreement and article 77 of Honduras' Industrial Property Law. (Honduran law provides five-year exclusive use of data provided in support of registering pharmaceutical products.) The Honduran Government's uneven history in protection of intellectual property rights leads to uncertainty for U.S. investors. The CAFTA obligations clarify that test data and trade secrets submitted to a government for the purpose of product approval will be protected against unfair commercial use for a period of 5 years for pharmaceuticals and 10 years for agricultural chemicals.

Although, there is currently no effective means of providing protection for plant varieties, as required by the TRIPs Agreement, Honduras committed in the CAFTA to accede to the UPOV Convention (International Union for the Protection of New Varieties of Plants, 1991) by January 1, 2006, or provide patent protection for plants by the date of entry into force of the CAFTA.

### SERVICES BARRIERS

Currently, special government authorization must be obtained to invest in the tourism, hotel, and banking services sectors. Foreigners may not hold a seat in Honduras' two stock exchanges or provide direct

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brokerage services in these exchanges. Honduran professional bodies heavily regulate the licensing of foreigners to practice law, medicine, engineering, accounting, and other professions.

Under the CAFTA, 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, Central American mutual funds will be able to use foreign-based portfolio managers. The commitments in services cover both cross-border supply of services as well as the right to invest and establish a local services presence (such as in tourism or securities). Market access to services is supplemented by requirements for regulatory transparency. Regulatory authorities must use open and transparent administrative procedures, consult with interested parties before issuing regulations, provide advance notice and comment periods for proposed rules, and publish all regulations. The right to provide professional services will be granted on a reciprocal basis depending on the requirements in individual U.S. states.

### INVESTMENT BARRIERS

The Constitution of Honduras requires that all foreign investment complement, but not substitute for, national investment. 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 \$8,353). Foreign ownership of land within 40 km of the coastlines and national boundaries is constitutionally prohibited, though tourism investment laws allow for certain exceptions. Inadequate land title procedures have led to numerous investment disputes involving U.S.-citizen landowners. Under the CAFTA, 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 2001, a Bilateral Investment Treaty (BIT) between the U.S. and Honduras entered into force. The treaty provides for equal protection under the law for U.S. investors in Honduras 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.

Honduras has taken the following limited exceptions to its BIT national treatment obligation: properties on cays, reefs, rocks, shoals or sandbanks or on islands or on any property located within 40 km of the coastline or land borders of Honduras, small scale industry and commerce with total invested capital of no more than \$40,000 or its equivalent in national currency, ownership, operation and editorial control of broadcast radio and television, ownership, operation and editorial control of general interest periodicals and newspapers published in Honduras.

In the investment chapter of the CAFTA, Honduras will commit to provide a higher level of protection for U.S. investors than under the existing BIT. The CAFTA requires that all forms of investment will be protected, including enterprises, debt, concessions, contracts and intellectual property. 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.

### TRADE RESTRICTIONS AFFECTING ELECTRONIC COMMERCE

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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 project of the Chamber of Commerce and Industry of Tegucigalpa (CCIT), the Chamber of Commerce and Industry of Cortes (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 telecom infrastructure and Internet bandwidth capacity to effectively support significant electronic commerce at the present time. Except for web page promotional material, companies are not yet utilizing computer sales as an additional distribution channel in Honduras. Twenty-five private ISPs compete for an estimated 30,000 Internet users.

Under the CAFTA, Central America and the United States agreed to provisions on e-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 e-commerce environment. As it develops its electronic commerce sector, Honduras joined other parties in committing to non-discriminatory treatment of digital products and agreeing not to impose customs duties on such products and to cooperate in numerous policy areas related to e-commerce.

### **OTHER BARRIERS**

#### **Anti-Competitive Practices**

U.S. companies occasionally encounter anti-competitive practices by private firms, especially in the case of large investments in sectors with one or two national players. The Government of Honduras hopes to address these problems more systematically with the drafting and approval in 2004 of a Competition Law. The World Bank is assisting with this project.

#### **Corruption**

Historically, U.S. firms and private citizens have expressed concern that corruption complicates doing business in Honduras, and thus is a constraint on foreign direct investment. Anti-corruption provisions in the CAFTA aim to help alleviate these problems, particularly by criminalizing the bribery of a public official in any area related to trade and investment. Honduras' judicial system is easily influenced; investment and business disputes involving foreigners have rarely been resolved in a transparent manner. The administration of justice is a key challenge to domestic and foreign companies. With considerable U.S. help, the government is reforming Honduras' judicial system and fighting corruption, though serious problems remain in these areas. Anti-corruption provisions in the CAFTA aim to help alleviate these problems, particularly by criminalizing the bribery of a public official in any area related to trade and investment.