

NICARAGUA

TRADE SUMMARY

The U.S. trade deficit with Nicaragua was \$242 million in 2002, an increase of \$81 million from 2001. U.S. goods exports in 2002 were \$438 million, down 1.2 percent from the previous year. Corresponding U.S. imports from Nicaragua were \$679 million, up 12.5 percent. Nicaragua is currently the 69th largest export market for U.S. goods.

The stock of U.S. foreign direct investment (FDI) in Nicaragua in 2001 was \$206 million, up from \$179 million in 2000.

IMPORT POLICIES

In 2002, Nicaragua completed a broad package of tariff reductions launched in 1997. This reform was accompanied by the removal of many non-tariff barriers, as well as the elimination of the discretion of government officials to waive the application of tariffs. The reform package also repealed restrictive laws on agents, representatives, and distributors of foreign firms. The reform process is in accordance with reduction and harmonization of a common external tariff among members of the Central American Common Market (CACM), to between zero and 15 percent on most items.

Nicaragua imposes regular import duties of 15 percent on many final consumer goods and a duty of 5 percent on intermediate goods imported that are imported, but assembled or produced in, Central America. In addition, a temporary protection tariff (ATP) of 5 percent to 10 percent above the regular import duty, with a maximum combined rate of 20 percent on most of these items, is levied on some 900 items. The regular import duty and ATP taxes are assessed on a good's CIF value. A small number of protected agricultural commodities such as rice, corn, and chicken parts face special import tariffs. In the case of rice, these may be as high as 103.5 percent.

A luxury tax, or "specific consumption tax" (IEC), is levied on 609 items. The tax is generally lower than 15 percent, with a few significant exceptions. Although the IEC is not specifically a tax on imports, the value on which it is based varies depending on whether a product is produced domestically or abroad, and therefore the IEC may have some discriminatory effect on imports. While the IEC tax on domestic goods is based on the manufacturer's price, on imported goods the IEC is

based on CIF value. Alcoholic beverages and tobacco products are an exception in that the IEC is assessed on the price charged to the retailer.

In accordance with April 2000 amendments to Nicaragua's tax laws, IEC taxes on soft drinks, alcoholic beverages, and tobacco products are being reduced. The IEC on soft drinks has been lowered 3 percentage points annually since 2000, and will reach a target rate of 9 percent in 2003. The IEC on rum and other liquor has dropped to the target rate of 35 percent and the IEC on canned beer has fallen to the target rate of 32 percent as of 2002. For bottled and draft beer, the IEC has been reduced one percentage point annually from a level of 37 percent in 2000, and will reach the target level of 32 percent in 2005. The IEC on cigars and cigarettes has decreased to the target level of 38 percent as of 2002.

Nicaragua also levies a 15 percent value-added tax (IGV) on most items, except agricultural inputs.

Nicaragua's classification of vehicle engine sizes for determining the assessment of luxury taxes represents a barrier to U.S. exports. Cars with large engines (greater than 4000 cc) face an IEC tax of 25 percent, while vehicles with smaller engines are charged either zero or a three percent IEC tax.

Import licensing requirements are minimal, however, licenses are required for imports of sugar.

Importers complain of steep secondary customs costs, including customs declarations form charges and consular fees. In addition, importers are required to employ licensed customs agents, adding further costs. Until mid-2002, tariffs and import taxes for most goods were assessed on a "reference price" determined by Nicaragua's customs authorities at the time of entry inspection, rather than on a CIF/bill of lading basis. This reference price was often significantly higher than the actual amount paid by importers. However, since September 2002, following a two-year delay, Nicaraguan authorities replaced the reference price basis with the WTO customs valuation method.

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STANDARDS, TESTING, LABELING AND CERTIFICATION

In October 2001, the Nicaraguan Ministry of Health issued a circular requiring food importers to certify that food products had not been genetically modified. The Ministry of Health subsequently suspended implementation of the circular in order to review the WTO implications of the measure.

GOVERNMENT PROCUREMENT

Nicaragua's law on government procurement went into effect in January 2000. It provides for non-discrimination among suppliers. Nicaragua is not a party to the WTO Agreement on Government Procurement.

EXPORT SUBSIDIES

All exporters receive tax benefit certificates equivalent to 1.5 percent of the FOB value of the exported goods. Foreign inputs for Nicaraguan export goods from the country's free trade zones enter duty-free and are exempt from value-added tax.

INTELLECTUAL PROPERTY RIGHTS (IPR) PROTECTION

In January 1998, Nicaragua and the United States signed a bilateral IPR agreement covering patents, trademarks, copyright, trade secrets, plant varieties, integrated circuits, and encrypted satellite signals. In 1999, the National Assembly approved a new copyright law, a plant variety protection law, a law on the protection of satellite signals, and a law on integrated circuit design. In 2000, a new law on patents was passed, and a law on trademarks was passed in 2001. The government made two attempts to crack down on music recording piracy in 2001. More recently, the Health Ministry suspended the commercialization and distribution of a locally-produced copy of a major U.S. pharmaceutical company's product, recognizing the U.S. producer's existing patent. The Nicaraguan government also dedicated three public prosecutors solely to IPR issues.

Nicaragua is a signatory to the Paris Convention, Mexico Convention, Buenos Aires Convention, Inter-American Copyrights Convention, Universal Copyright Convention, and the Satellites Convention.

Trademarks

Protection of well-known trademarks is poorly enforced. Current procedures allow individuals to register a trademark without restriction for a renewable 10 year period at a low fee.

Copyrights

Pirated videos, recordings, and software remain readily available. Although a new copyright law went into effect in 1999, criminal penalties were delayed for 6-12 months. The U.S. Government and industry are working with the Nicaraguan government to provide training for effective enforcement.

SERVICES BARRIERS

Nicaragua has ratified its commitments under the 1997 WTO Financial Services Agreement. Nicaragua has WTO commitments covering most banking services (acceptance of deposits, lending, leasing, guarantees, and foreign exchange services), but it has no commitments in securities, asset management, or other (non-insurance) financial services. The government's local partner requirement in solicitations for project proposals appears to discourage U.S. companies from entering the financial services market.

Nicaragua allows foreign banks to operate either as 100 percent-owned subsidiaries or as branches, but no U.S. bank has yet reentered the Nicaraguan financial market since several major U.S. banks withdrew in the 1970s. Legislation passed in 1996 opened the insurance industry to private sector participation, so that four private insurance companies now compete with the government-owned firm INISER. However, no U.S. or other foreign insurance company has entered the Nicaraguan market.

INVESTMENT BARRIERS

Poorly enforced property rights and the resulting proliferation of property disputes are among the most serious barriers to investment in Nicaragua. The Sandinista government expropriated nearly 30,000 properties during the 1980s. While there has been progress in resolving claims, valuable properties remain in the hands of the government or private parties (including former Sandinista government officials), awaiting fair compensation or return to the rightful owners. Property claimants can sue for return of their properties

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but many complain that the legal system favors the current occupants. The government continues to offer bonds as a means of compensation in most cases. Claimants may choose between pursuing the return of property or obtaining compensation through such bonds. The United States continues to press Nicaragua to improve its resolution of expropriation cases and to take measures to increase the value of the compensation bonds. Over 14,000 total claims for compensation are outstanding, of which about 900 are claims that U.S. citizens have registered with the U.S. Embassy.

Remittance of 100 percent of profits and original capital three years after investment is guaranteed through the Central Bank at the official exchange rate for those investments registered under the Foreign Investment Law. Investors who do not register their capital may still make remittances through the parallel market, but the government will not guarantee that foreign exchange will be available.

The resolution of commercial and investment disputes is still unpredictable. The legal system is cumbersome and often subject to non-judicial considerations. Enforcement of judicial rulings is uneven.

Several U.S. multinational firms and the U.S. Chamber of Commerce continue to express concern about the constitutionality of Nicaraguan Law 364, enacted in 2001, that retroactively imposes new legal liabilities for U.S. companies that manufactured or used the chemical pesticide DBCP in Nicaragua prior to a U.S. ban in late 1979. Onerous requirements under Law 364 include; truncated judicial proceedings; imposition of a \$100,000 non-refundable bond per defendant as a condition for firms to put up a defense in court; escrow requirements of approximately \$21 million; irrebutable presumptions of causation; and liquidated damages as minimum liabilities. In December 2002, the first judgment under this law was rendered in a consolidated lawsuit in the amount of \$489 million. Several hundred lawsuits claiming damages of over \$11 billion are pending.

Nicaragua and the United States concluded a Bilateral Investment Treaty (BIT) in July 1995. Nicaragua's National Assembly ratified the BIT in June 1996. The BIT awaits ratification by the U.S. Senate.