NICARAGUA

TRADE SUMMARY

The U.S. goods trade deficit with Nicaragua was $1.6 billion in 2011, up $525 million from 2010. U.S. goods exports in 2011 were $1.1 billion, up 7.3 percent from the previous year. Corresponding U.S. imports from Nicaragua were $2.6 billion, up 29.7 percent. Nicaragua is currently the 82nd largest export market for U.S. goods.

The stock of U.S. foreign direct investment (FDI) in Nicaragua was $300 million in 2010 (latest data available), down from $301 million in 2009.

IMPORT POLICIES

Free Trade Agreement

On August 5, 2004, the United States signed the Dominican Republic-Central America-United States Free Trade Agreement (CAFTA-DR or Agreement) with five Central American countries (Costa Rica, El Salvador, Guatemala, Honduras, and Nicaragua) and the Dominican Republic (the Parties). Under the Agreement, the Parties are significantly liberalizing trade in goods and services. 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.

The Agreement entered into force for the United States, El Salvador, Guatemala, Honduras, and Nicaragua in 2006 and for the Dominican Republic in 2007. The CAFTA-DR entered into force for Costa Rica on January 1, 2009.

In 2008, the Parties implemented amendments to 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 Parties also implemented a reciprocal textile inputs sourcing rule with Mexico. Under this rule, Mexico provides duty-free treatment on certain apparel goods produced in a Central American country or the Dominican Republic with U.S. inputs, and the United States provides reciprocal duty-free treatment under the CAFTA-DR on certain apparel goods produced in a Central American country or the Dominican Republic with Mexican inputs. These changes further strengthen and integrate regional textile and apparel manufacturing and create new economic opportunities in the United States and the region.

In February 2011, the CAFTA-DR Free Trade Commission (FTC), the central oversight body for the Agreement, met for the first time in San Salvador, El Salvador. The FTC reviewed the implementation of the Agreement and its trade and economic impact on the region and agreed to certain changes to strengthen the Agreement's operation. The FTC discussed a broad range of ways to enhance competitiveness in the region and endorsed several initiatives to generate new opportunities for all of the countries to realize the benefits of the CAFTA-DR Agreement, with a heightened focus on small and medium sized businesses.

The United States hosted an FTC meeting on January 23, 2012 in Miami at which CAFTA-DR countries recognized continued growth in trade and integration, and acted to further strengthen CAFTA-DR institutions and initiatives.

Tariffs

As a member of the Central American Common Market, Nicaragua applies a harmonized external tariff on most items at a maximum of 15 percent with some exceptions.

Approximately 95 percent of tariff lines are harmonized at this rate or lower. In response to rising prices, in 2007, Nicaragua issued a series of decrees to unilaterally eliminate or reduce to five percent tariffs on many basic foodstuffs and consumer goods. These decrees have been extended every six months and are currently in effect through June 30, 2012.

Under the CAFTA-DR, however, 100 percent of U.S. industrial trade will enter Nicaragua duty free by 2015. Nearly all textile and apparel goods that meet the Agreement's rules of origin now enter Nicaragua 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 Nicaragua duty free. Nicaragua will eliminate its remaining tariffs on nearly all agricultural goods by 2025, including those on pork and yellow corn by 2020; rice and chicken leg quarters by 2023; and dairy products by 2025. For certain products, tariff-rate quotas (TRQs) will permit duty-free access for specified quantities during the tariff phase out period, with the duty-free amount expanding during that period. Nicaragua will liberalize trade in white corn through expansion of a TRQ rather than by tariff reductions.

Nontariff Measures

Under the CAFTA-DR, Nicaragua committed to improve transparency and efficiency in administering customs procedures, including the CAFTA-DR's rules of origin. The Nicaraguan government levies a "selective consumption tax" on some luxury items of 15 percent or less, with a few exceptions. The tax is not applied exclusively to imports; however, domestic goods are taxed on the manufacturer's price, while imports are taxed on the cost, insurance, and freight value. Alcoholic beverages and tobacco products are taxed on the price billed to the retailer.

U.S. companies report that difficulties with the Nicaraguan Customs Administration are a significant impediment to trade. Complaints about the institution concern bureaucratic delays, arbitrary valuation, technical difficulties, corruption, and politicization. Investors also complain that customs authorities wrongly classify goods to boost tariff revenue, and the Embassy has received numerous complaints from investors and non-governmental organizations about goods and donations being held up in customs without legal justification.

GOVERNMENT PROCUREMENT

The CAFTA-DR requires that procuring entities use 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 are permitted to bid on procurements of most Nicaraguan government entities, including key ministries and state-owned enterprises, on the same basis as Nicaraguan suppliers. The anticorruption provisions in the Agreement require each government to ensure under its domestic law that bribery in matters affecting trade and investment, including in government procurement, is treated as a criminal offense or is subject to comparable penalties.

Procurement by government entities not covered by the CAFTA-DR, such as the National Electricity Company, the National Assembly, the National Basic Foods Company, the Ministry of Tourism, the

Supreme Court, the Ministry of Energy and Mines, and some public universities, have historically been subject to highly nontransparent and irregular practices, especially the abuse of procedures for emergency tenders that allow the suspension of competitive bidding. In 2010, the Nicaraguan National Assembly amended the 1999 Government Procurement Law, also known as Law 323, in order to close certain loopholes. The amendment eliminated exclusions to the established bidding process that had allowed favoritism and unfair competition.

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

EXPORT SUBSIDIES

ALBANISA, the state-owned company that imports and distributes Venezuelan petroleum, provides preferential financing to those who agree to export their products to Venezuela.

All exporters receive tax benefit certificates equivalent to 1.5 percent of the free-on-board value of the exported goods. Under the CAFTA-DR, Nicaragua may not adopt new duty waivers or expand existing duty waivers that are conditioned on the fulfillment of a performance requirement (*e.g.*, the export of a given level or percentage of goods). However, Nicaragua 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. The U.S. Government is working with the Nicaraguan government in an effort to ensure compliance with its CAFTA-DR obligations.

INTELLECTUAL PROPERTY RIGHTS PROTECTION

To implement its CAFTA-DR intellectual property rights (IPR) obligations, Nicaragua undertook legislative reforms providing for stronger IPR protection and enforcement. Despite Nicaragua's efforts, the United States continues to be concerned about the piracy of optical media and trademark violations in Nicaragua. The United States has expressed concern to the Nicaraguan government about inadequate IPR enforcement.

The United States will continue to monitor Nicaragua's implementation of its IPR obligations under the CAFTA-DR.

SERVICES BARRIERS

Under the CAFTA-DR, Nicaragua granted U.S. services suppliers substantial access to its services market, including financial services.

Under the CAFTA-DR, Nicaragua committed to opening its telecommunications sector to U.S. investors and services suppliers. The executive branch has proposed legislation that would strengthen the enforcement capacity of the telecommunications regulator (TELCOR) and improve competitive conditions in Nicaragua's telecommunications market. The United States will monitor this process, as well as TELCOR's efforts to implement new telecommunications regulations.

INVESTMENT BARRIERS

During the 1980s, the Nicaraguan government confiscated some 28,000 properties. Since 1990, thousands of individuals have filed claims for the return of their property or to receive compensation. Where granted, compensation is most commonly provided via low interest bonds issued by the government.

Since taking office in January 2007, the administration of President Ortega has resolved 223 claims, including 3 during the current waiver year. Since that time, the Nicaraguan government has also dismissed claims based on the application of Decrees 3 and 38 from 1979.

A total of 419 U.S. claims registered with the U.S. Embassy remain outstanding. The United States continues to press the Nicaraguan government to resolve these outstanding claims. The U.S. Government has been working with U.S. citizens to press the Nicaraguan government to protect the right to due process for the lawful owners of property in Nicaragua. The ongoing occurrence of disputes involving the government of Nicaragua suggests a systemic concern that negatively impacts the investment climate.

OTHER BARRIERS

Some U.S. firms and citizens have found corruption in government, including in the judiciary, to be a significant concern and a constraint to successful investment in Nicaragua. Administrative and judicial decision-making appear at times to be inconsistent, nontransparent, and very time-consuming. Courts have frequently granted orders (called "*amparos*") that enjoin official investigatory and enforcement actions indefinitely. Such delays appear to protect individuals suspected of white collar crime.

With monetary support from Venezuela, the government has increased its role in the economy, and independent companies face increasing competition from these state-run corporations. Moreover, despite the legal framework CAFTA-DR provides, property rights and intellectual property rights are especially difficult to defend, and there is no reliable means of resolving disputes. The legal system is regarded as weak, cumbersome, corrupt, and subject to political pressure.

Investors regularly complain that regulatory authorities are arbitrary, negligent, slow to apply existing laws (or likely to apply laws superseded by CAFTA-DR), and often favor one competitor over another. Investors cite arbitrariness in taxation and customs procedures, as well as a lack of delegation of decision-making authority to the appropriate level. Tax audits of foreign investors have increased in frequency and duration, to the point where they may hinder normal business operations.

Law 364

U.S. companies and the U.S. Chamber of Commerce have concerns that Nicaraguan Law 364, enacted in 2000 and implemented in 2001, retroactively imposes liability on foreign companies that manufactured or used the chemical pesticide DBCP in Nicaragua. DBCP was banned in the United States after the Environmental Protection Agency cancelled its certificate for use (with exceptions) in 1979. U.S. companies have expressed concern that Law 364 and its application under Nicaragua's judicial system lack due process, transparency, and fundamental fairness. In particular, Law 364 allows for retroactive application of no-fault liability related to a specific product, waiver of the statute of limitations, irrefutable presumption of causality, truncated judicial proceedings, the imposition of a $100,000 nonrefundable bond per defendant as a condition for firms to mount a defense in court, and escrow requirements of approximately $20 million earmarked for payment of awards and minimum liabilities as liquidated damages (ranging from $25,000 to $100,000). Some plaintiffs seek to lay claim to U.S. company assets in other countries. In 2009 and 2010, courts in California dismissed with prejudice three Nicaraguan DBCP cases, citing plaintiff fraud. In one of those cases a federal district court denied recognition of a $97 million Nicaraguan judgment under Law 364, because the court found that the "case did not arise out of proceedings that comported with the international concept of due process." The court also found "the presumption of causation in Special Law 364 contradicts known scientific fact." The U.S. Government has been working with the affected U.S. companies and the Nicaraguan government to facilitate resolution of this issue.