NICARAGUA

TRADE SUMMARY

The U.S. goods trade deficit with Nicaragua was $1.6 billion in 2012, up $76 million from 2011. U.S. goods exports in 2012 were $1.1 billion, up 6.6 percent from the previous year. Corresponding U.S. imports from Nicaragua were $2.7 billion, up 5.6 percent. Nicaragua is currently the 76th largest export market for U.S. goods.

The stock of U.S. foreign direct investment (FDI) in Nicaragua was $320 million in 2011 (latest data available), up from $268 million in 2010.

Free Trade Agreement

The Dominican Republic-Central America-United States Free Trade Agreement (CAFTA-DR or "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. The CAFTA-DR significantly liberalizes trade in goods and services as well as 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 United States hosted a Free Trade Commission (FTC) meeting on January 23, 2012 in Miami. At that meeting the CAFTA-DR countries recognized continued growth in trade and integration and acted to further strengthen CAFTA-DR institutions and initiatives.

In 2012, the Parties implemented changes to a number of the Agreement's rules of origin for textile and apparel goods to enhance the competitiveness of the region's textiles sector. The changes to these rules of origin were made pursuant to a Decision of the first FTC meeting in February 2011 and are aimed at facilitating regional sourcing and encouraging greater integration of the textile and apparel supply chain in the region. The new rules became effective on October 13, 2012, after the other CAFTA-DR countries had completed their respective domestic procedures, and the U.S. Congress passed legislation implementing the changes for the United States.

IMPORT POLICIES

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 5 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, 2013.

Under the CAFTA-DR, 100 percent of U.S. consumer and industrial goods 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 virtually all agricultural goods by 2020 (2023 for rice and chicken leg quarters and 2025 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. Nicaragua will liberalize trade in white corn through continual expansion of a TRQ rather than the reduction of the out-of-quota tariff.

Nontariff Measures

Under the CAFTA-DR, all of the CAFTA-DR countries, including Nicaragua, committed to improve transparency and efficiency in administering customs procedures, including the CAFTA-DR's rules of origin. The Nicaraguan government levies a 15 percent or less "selective consumption tax" on some luxury items, with a few exceptions. The tax is not applied exclusively to imports; 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 concern bureaucratic delays, arbitrary valuation of goods, technical difficulties, corruption, and politicization. U.S. exporters and importers of U.S. goods also complain that customs authorities deliberately misclassify goods to boost tariff revenue, and detain goods and donations 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 has historically been subject to highly nontransparent and irregular practices. These entities include 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. These entities have, among other things, abused 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. However, there are still many allegations of irregularities in the procurement process, in particular involving procuring entities splitting procurements into smaller lots, an action which allows them to use a less competitive bidding process.

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 parties that 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 continues to work 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, as well as a lack of transparency about its legislative and regulatory processes. The United States will continue to monitor Nicaragua's implementation of its IPR obligations under the CAFTA-DR.

SERVICES BARRIERS

Telecommunications

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 is monitoring this process, as well as TELCOR's efforts to implement new telecommunications regulations. In 2012, there are also allegations that recent telecommunications concessions were not conducted in a transparent and competitive manner and that the tender winners were pre-determined.

INVESTMENT BARRIERS

During the 1980s, the Nicaraguan government confiscated some 28,000 properties in Nicaragua. 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 nearly 300 U.S. citizen claims; as of March 2013 a total of 280 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.

OTHER BARRIERS

Some U.S. firms and citizens report 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 private companies face increasing competition from state-run corporations. Moreover, despite the legal framework CAFTA-DR provides, property rights and intellectual property rights are especially difficult to defend, and there appears to be 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 negligent and slow to apply existing laws (or are likely to continue to apply laws that should have been superseded by CAFTA-DR provisions), act arbitrarily, and often favor one competitor over another. Investors cite arbitrariness in taxation and customs procedures, as well as a failure to delegate decision-making authority to an appropriate level. There is concern that the frequency and duration of tax audits of foreign investors could interfere with 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 1,2-Dibromo-3-Chloropropane (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 another case a federal district court in Florida 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 district court judgment was affirmed by the 11th Circuit Court of Appeals in March 2011. In October 2011, a U.S. company announced the signing of a definitive settlement agreement, which with full implementation will bring to an end all lawsuits brought against the company. The U.S. Government will continue to work with other affected U.S. companies and the Nicaraguan government to facilitate resolution of this issue.